ACCESS TO CAPITAL FOR SMALL BUSINESSES WITH TOXIC WASTE SITE PROBLEMS

JOINT HEARING

BEFORE THE

SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES, AND ENERGY

AND

SUBCOMMITTEE ON ENVIRONMENT AND LABOR

OF THE

COMMITTEE ON SMALL BUSINESS HOUSE OF REPRESENTATIVES

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ACCESS TO CAPITAL FOR SMALL BUSINESSES WITH TOXIC WASTE SITE PROBLEMS

MONDAY, MAY 15, 1989

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES, AND ENERGY AND SUBCOMMITTEE ON ENVIRONMENT AND LABOR, COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The subcommittee met, pursuant to notice, at 11 a.m., Junior High School 101, 2750 Lafayette Avenue, the Bronx, NY, Hon. Ron Wyden (chairman of the subcommittee) presiding.

Chairman WYDEN. The subcommittees will come to order.

Today the Subcommittee on Regulation, Business Opportunity and Energy and the Subcommittee on Environment and Labor, which is chaired by our good friend Mr. Torres of California, take up the subject of access capital for environmental cleanup.

Now, two congressional subcommittees are here today, but essentially for one reason: your Congressman Elliot Engel has been, in my view, an outstanding advocate of environmental cleanup, particularly addressing concerns of this community as it faces the challenge of trying to find financing and to deal with these issues. It is my view that concerns of this community has, essentially mirror the concerns of communities across this country. So I think Elliot Engel has done a tremendous service to the Congress both in advocating for responsible environmental cleanup in responsiveness to this communities' concerns, and in bringing attention to the underlying problems that go right to the heart of how we bring about these cleanups in this country.

Now, the fact of the matter is that these kinds of environmental problems for the community can be like a bit of quicksand. The jobs may disappear, the neighborhood may get a piece of unusable property oozing pollution, lenders can face serious problems because they put money on the line, the consumers may get higher prices, and the taxpayer may get left holding the bag. So we have come today to learn more about the financing practices the Government has set about to help small businesses and help communities deal with these difficult environmental issues.

We are going to hear about the Small Business Administration financing program begun in 1976. It limped lightly for years crippled by the Office of Management and Budget, almost unknown by those who need it the most, and was snarled in a thicket of red tape until Congress decided to put it out of its misery last year. We will also hear about a new program, still not on the books, that the

Small Business Administration has openly predicted will have even less of an impact.

Our purpose today and the reason why we are here, two congressional subcommittees, is not to spread gloom and doom. We believe there are solutions. They may be as simple as funding the financing programs, telling people about them and trimming the red tape. It is possible today we may learn about the need for new programs, well, programs that are designed to meet the needs of today's evolving environmental concerns.

Now, we will have three panels discuss problems faced by individual businesses and the fourth panel has been assembled at the urging of Mr. Engel to look specifically at some neighborhood concerns, concerns that have come up again and again as the neighborhood tries to face these particular issues.

I will go through some of the other ground rules in a moment, but at this point, for purposes of making an opening statement, I would like to recognize Congressman Engel who is a ranking Democrat on my subcommittee, the Regulation Subcommittee, and to tell him how much I appreciate his leadership.

Elliot, we recognize you for any opening statement you care to make.

Mr. ENGEL. Thank you, Mr. Chairman. Thank you very much for holding this hearing in the Bronx today, and welcome to the Bronx, I know it is a long way from Oregon, but we have many problems that I am sure are the same problems in all 50 States around the country.

As you are aware, toxic waste is a major issue around the country, certainly a major issue here in New York City. I am delighted today's hearing will center on access to capital for small businesses with toxic problems and, in addition, examining the situation surrounding the Pelham Bay landfill which is in my district and is something that had evolved as a resident of the Northeast Bronx for many, many years until we were successful in getting it closed. The Pelham Bay landfill, when it was open, had many toxic substances placed in it. The community around the landfill is very concerned about the dump and the effect it is having on the quality of life in neighborhoods. It is vitally important that we ascertain the true effect this waste site is having on our neighborhoods and business. I hope that this hearing will help confront many of the concerns voiced by residents of our area.

In addition to examining the problems with the Pelham Bay landfill, I am delighted this hearing will focus on the issue of access to capital for small businesses with toxic problems. Many small businesses, such as dry cleaners and gas stations deal with harmful materials daily, yet whenever they have an accident it is virtually impossible for them to get money to clean it up. Lenders are reluctant to give money to these enterprises because many times they do not have collateral to back up the loans. Additionally, banks can be held liable for the effects of toxic spill under the Superfund loans. The inability to get a loan is causing many of these enterprises to go out of business.

Small businesses are the fastest growing companies in this Nation, and I hope that this hearing will address this dilemma and that a solution will be found.

Mr. Chairman, I am very glad that you journey to the Bronx, as I mentioned before, and I want to thank all the witnesses for coming here today and look forward to hearing all the testimony.

Congressman Torres is on the road and I have been told we can expect to have him here shortly.

I am proud to be living in this area for the past 30 years. Places like the Pelham Bay landfill really give us a great cause to ponder about our past practices. I am convinced the Federal Government will play a very, very large role in trying to cleanup the dump and also in assuring us the dump will be cleaned and that there will not be harmful effects, once it is cleaned, to our communities. I think the Federal Government can play a major role and I intend no rest until we cleanup that dump and have the Federal Government play its rightful role. We spend lots and lots of money in the Federal Government and I can think of no better way to spend our money than to insure that our neighborhoods are clean and pollution free and have an environment in which we feel comfortable raising our families and where we feel good about living in.

Again, thanks for coming to the Bronx and I look forward to hearing from the witnesses.

Chairman WYDEN. Thank you very much for an excellent statement. I know on behalf of Congressman Torres and myself, we are very anxious to particularly get a responsible approach at the Federal level in order to assist on matters here in this area, which you have described so very well.

For purposes of our ground rules, we will make the prepared statements of all our witnesses a part of the record in their entirety, and because we have a long hearing in front of us, I am going to ask each witness to stay within 5 minutes for their prepared testimony. You will make your complete remarks part of the record. You will have to adhere to the 5-minute rule strictly. Our first panel will be Ms. Dalia, who will be testifying on behalf of Mr. Rafael Santana, who owns a service station here in the Bronx. Mr. Santana is not able to be with us but Ms. Dalia is; and we welcome on behalf of the Cleaners Association of New York, Mr. William Seitz, from Mansfield, MA; and Mr. John Hall, president of the American Wood Preservers Institute. We welcome you, Mr. Hall.

It is the practice of Subcommittee on Regulations to swear all the witnesses. Do any of you four have any objection to being sworn today?

PANEL RESPONSE. No; whereupon, John Hall, William Seitz, Reisa Dalia, having been first duly sworn, were examined and testified as follows:

Chairman WYDEN. Mr. Seitz, why don't we get your prepared remarks that will be made part of the record entirely, and if you could summarize your concerns in 5 minutes, it will be very helpful.

TESTIMONY OF WILLIAM SEITZ, MANSFIELD, MA, NEIGHBORHOOD CLEANERS ASSOCIATION

Mr. SEITZ. I will try to do that. My name is William Seitz. I am the executive director of the Neighborhood Cleaners Association, which is a regional association that represents a little over 4,000

drycleaners in the States of New York, New Jersey, Connecticut, Massachusetts, Rhode Island, Pennsylvania, Delaware, West Virginia, and Florida. We offer a pretty good sized neighborhood. We have a little over 2,000 members in the State of New York.

The reason I am here is to address myself to certain needs. I think it is important to establish a little bit of the history of the drycleaning industry of which I have been involved industry-wide 45 years, and with the association, this is my 40th year.

I want to state emphatically that the drycleaning industry has never taken and does not now take an adversarial position regarding regulation control of issues on air pollutants. In fact we have demonstrated by our actions over the last 10 years of Government regulations and over the last 45 as a matter of economics and safety, that control containment and reclamation of perchloroethylene, the drycleaning solvent used by over 95 percent of our members and by over 75 percent of the drycleaners throughout the United States, is a necessary and essential requisite.

The industry has grown in the last 5 or 6 years but drycleaning sales dropped in 1988 and continue to decline in 1989 because of the soft economic climate, improved synthetic and man-made fibers. For example, due to polyester and an over saturation of drycleaning facilities, profits are being squeezed as a result of escalating cost of chemicals and supplies. Even the cost of compliance with governmental regulations, especially at the State level, has added an additional 2 to 3 percent in overhead to an already overburdened small business operator.

The big problem with the drycleaning industry is really one of historic precedence because in the last 10 years the drycleaning industry has played a leadership role in terms of disposing of hazardous waste. We have a hazardous waste mill-run program we put into place 8 years ago, but unfortunately the chemical used in drycleaning, perchloroethylene, also known as PCE, is classified as a hazardous material. About 90 percent of the drycleaners in the United States use perchloroethylene because they have very limited choices. In more urban areas like New York and other large cities it is probably closer to 98 percent.

In the past perc was not regarded as hazardous as it is today. There were rules pertaining to its use and disposal. In fact if you go back 20 years ago, very few chemicals were classified as hazardous. There were rules pertaining to its use and disposal. Because of this filtration and distillation, waste products were disposed of in many ways that would be considered illegal today and at that time was completely legal.

Many drycleaners may be facing cleanups for septic tanks, cesspools, and in many cases the person who caused that contamination has sold out and gone.

I will see if I can summarize in 30 seconds or so: Number one, the misinformation or misconception of the hazards of PCE should not be the reason to unnecessarily burden an industry that has demonstrated its willingness to cooperate. There has been and continues to be a serious difference within the scientific community as to the potential hazard that PCE or perc poses to the workers and the public. We think the drycleaning industry by its actions has proven that we are part of society and willing to accept the obliga-

tions and responsibilities that come with that. We feel in many cases some of the regulations put forth by the Occupational Safety and Health Administration that covers the drycleaning industry has been unreasonable and accessive, but despite that fact we have acted as good citizens and will continue to do so. We need assistance. There is no alternative solvent available to the industry that can replace perchloroethylene and, in my opinion, there need not be one in terms of what the drycleaning industry has done to significantly reduce the exposure and emissions of the chemical in the workplace and the atmosphere.

The drycleaning industry was the first industry to accept the need for proper disposal of hazardous waste. NCA has had a program in operation for over 5 years for the legal disposal of hazardous waste disposal service. Over 80 percent of our members are using this service despite the fact that many are below the small quantity generator requirement.

New developments and improvements in drycleaning machinery and auxiliary equipment are taking place at a rapid rate. State of the art refrigeration, heat pumps, drycleaning machines that do not vent to the atmosphere, closed loop, are the standard for new drycleaning equipment. Trasfer units are no longer being made so that all new installations and repiacements will be more efficient and will further reduce emissions. The cost of this new equipment is high. The average drycleaning machine, installed, is in the area of $30,000 to $50,000. For many small businesses, who have retrofitted with solvent absorbers or similar technology, the financial burden could be fatal. Please realize that the average drycleaner in the United States has a volume of $75,000 to $125,000. You are bound to see less and less drycleaners.

As we pointed out, we are a microcosm of what exists in the rest of the world, and the small business is society chipping away at that microcosm. We will wind up with not only an industry but a country that is second rate. Thank you.

[Mr. Seitz's statement may be found in the appendix.]

TESTIMONY OF REISA DALIA

Ms. DALIA. Good morning. My name is Reisa Dalia. My testimony is regarding the availability of loans and coverage for underground motor fuel storage tanks and cleanup.

Congressman Wyden and members of the committee, thank you for the opportunity to address you on an extremely important issue. I operate a service station in the Bronx. The service station industry over the last several years has gone through dramatic changes. In the past major oil companies have owned the land and tanks of service stations. In more recent years the oil companies have changed their marketing policies and have divested themselves of many of the service stations, selling them to the service station's operator. Federal law, the Petroleum Marketing Practice Act, requires service station operators be offered the first right of refusal when an oil company wishes to sell its service station property. Many operators took advantage of this opportunity, thinking they were achieving an American dream, owning their own service

station and being truly independent proprietors. The American dream, over the last several years, has turned into a nightmare.

The small independent operators such as myself are in a dilemma, we must upgrade the underground storage tanks. However, such a system costs between $60,000 to $100,000. Such capital investment is usually funded through the secure bank loans using our property; however, in recent years our property value, as far as bank and loan institutes are concerned, is zero. Attempts to secure second mortgages on the service station property will result in a denial of funds.

The Federal regulations with underground tank insurance will become effective; service station operators will have to provide financial responsibility up to $1 million either through insurance or proof of financial ability for such conversation. To date there is no insurance available for underground tank leaks. The Federal Government is mandating a requirement that is impossible for us to comply with. Insurance is not available and if it were the cost would be prohibitive. Also few service station operators are able to provide financial capabilities of paying for exposure of $1 million.

Independent service stations, those who own their own property, make up approximately 35 percent of the service stations in this State. Most service stations that are owned by the independents, are the full-service type which provides service, car repair, air, water, to the public. As we become extinct these types of services will become harder and harder for the public to attain.

We are in desperate need of assistance. There are, however, several solutions that can be afforded. One can be a dedicated fund funded by a per barrell tank fee to cleanup leaks on service stations on a Federal or State level. Twenty-three States have instituted such a program and I understand they are working successfully.

The New York State legislature addressed the problem in the last two sessions and have been unable to agree upon legislation that would be helpful. We are in desperate need of your assistance and we urge this body to help us find a solution to our problem. We are not looking for charity, we are just looking for assistance that is not available to the private sector.

Again, I would like to thank you for the opportunity to speak and bring to your attention our problem and hope that you will do everything you can to assist us. Thank you.

Chairman WYDEN. Thank you very much for your helpful testimony.

[Ms. Dalia's statement may be found in the appendix.]

TESTIMONY OF JOHN HALL, PRESIDENT, AMERICAN WOOD PRESERVERS INSTITUTE

Mr. HALL. Mr. Chairman, with your permission I will begin. I am John Hall with the American Wood Preservers Institute located in Washington, DC. I am happy to be here, even though we don't have an operation in the New York district.

Mr. Haynes was able to come here from Boston to talk to some of the folks in the New York area about a variety of treated wood products for industrial and residential use in the northeastern States.

The industry across the Nation is composed of about 480 companies, operating about 600 treating plants located in 48 States and Puerto Rico. We have annual product sales of about $1.8 to $1.9 billion. Total industry employment is estimated by the Department of Commerce at about 11,300 people. EPA estimated that 93 percent of our companies employ less than 100 people.

By impregnating wood products with EPA-registered pesticides, the industry extends the useful service life of utility poles, railroad ties, piers, docks, bridges, backyard decks, fences, and other products, by a factor of five or six times over the expected service life of untreated wood in those same applications.

A combination of vacuum and pressure, sometimes with elevated temperature, evacuates water and air from the wood cells and replaces them with the wood preserving pesticides. Wastes and residues from the process are handled and disposed of in accordance with applicable Federal and State regulations.

To assure that our customers know the proper way to handle, use, and dispose of pressure treated wood, the industry, in cooperation with EPA, has developed a series of Consumer Information Sheets which accompany every batch or bundle of treated wood on its way to the user.

We appreciate the fact that you are conducting these hearings looking into problems faced by small business in obtaining financing for environmental or other reasons. It is a critical problem for the entire wood preserving industry, an industry composed primarily of small business companies.

EPA's Office or Policy Planning and Evaluation recently issued a report entitled: "The Small Business Sector Study: Impacts of Environmental Regulations on Small Business." One of the 10 industries specifically addressed in that September 1988 report is the wood preserving industry. Portions of that report, commenting on the wood preserving industry, are appended to my testimony.

The EPA report notes that in previous years as the industry was developing, and environmental concerns were not an issue, the practices of many wood preserving facilities eventually contributed to serious contamination of the surrounding area's soil and water. Many of these facilities have had to implement extensive cleanup operations to correct these problems. The cleanup costs have strained the financial resources of many firms severely, and several firms have gone bankrupt.

Over the period 1988–92, the cleanup of wood preserving facilities will continue and wood preservers will be faced with new regulations governing the disposal of their hazardous wastes, the reporting of toxic chemicals, and the control of stormwater flows. Management and reporting of hazardous wastes and toxic chemicals will add approximately $14,300 in annual costs to wood preservers' environmental expenses. These costs amount to about 32 percent of the 1976–83 median net profits for wood preservers in both the 10–19 and 20–49 employee-size category, and over four times the reported 1983 net profits. In addition to these costs, some potentially large costs of forthcoming waste disposal regulations and potentially large capital costs associated with waste-minimizing technologies have not been included in the estimates. These figures all suggest

that some wood preservers may have great difficulty meeting environmental expenses.

In addition to these increased annual costs, wood preservers may incur major construction costs to control stormwater. Although these regulations are still in the formative stages, the costs of some of the principal regulatory alternatives, such as construction of roofs or wastewater collection systems for storage yards, have been estimated to be about $200,000 even for small facilities. Capital costs of this magnitude amount to 150 percent of the median equity of wood preservers with fewer than 10 employees, and about 80 percent of the median equity of those with 10–19 employees. Should costs prove to be as high as the preliminary estimates indicate, small wood preservers would find it very difficult to meet these requirements.

These costs, however, are virtually insignificant in comparison with the costs EPA would impose on the industry as a result of the regulations proposed by its Office of Solid Waste in December 1988.

Implementation of the recently proposed Resource Conservation and Recovery Act rule would require an outlay for capital improvement of about $5.1 billion and for additional operating expenses for testing and remediation of about $800 million over the first 2 years the rule is in effect. The industry's annual revenue requirement for compliance would be about $800 million per year.

It would be impossible for most wood preservers to finance the expenditures necessary to meet the proposed RCRA requirements, even under the assumption that the industry could successfully price its product to obtain the entire annual revenue requirements EPA considers to be the appropriate measure of prospective price impact.

Costs imposed on wood preservers to finance expenditures needed to meet the OSW's proposed rule would cause an average increase in the price of treated wood products of over 50 percent, with price increases in certain product categories exceeding 100 percent.

In contrast, the congressionally mandated, multistatute approach recommended by the wood preserving industry, by making use of good industry practice where it is already in place and extending regulation by tightening labelling and water monitoring requirements, would require an outlay of only about $80 million over the first 2 years it were to be in effect. This proposal would provide equal or better environmental protection and would be affordable to most of the industry.

The approximately 15 percent of the treating industry not currently meeting the requisite management practice standards could reasonably be expected to finance the expenditures necessary to meet them. Annual costs of compliance of about $15 million would be low enough to provide only minor impacts on the industry, product prices, and ultimate consumers.

Copies of the extensive industry comments filed with EPA on this recent and unreasonable proposed rule are available to members of this committee in reviewing the unnecessary regulation of a virtually nonexistent problem at horrendous cost.

Again, thank you for your interest in the problems faced by small business concerns in financing investments and operating costs necessitated by environmental regulations. Thank you, sir.

Chairman WYDEN. Mr. Hall, thank you very much.

[Mr. Hall's statement may be found in the appendix.]

Chairman WYDEN. Before we proceed, we are very pleased Chairman Torres has arrived from the fog of LaGuardia. He is an outstanding Member of the Congress and before we go to your statement let's welcome Chairman Torres.

Chairman TORRES. Thank you, Mr. Chairman, for your introduction. Ladies and gentlemen, I apologize for the lateness but again, as the chairman indicated, we are having bad weather conditions. Indeed I am here with my colleague Mr. Engel, in his district, a new Member of Congress but an important Member that not only belongs to Chairman's Wyden's subcommittee, but also on my Subcommittee on Labor and Environment.

We are here to evaluate and gauge the extent of the problem of environmental contamination. In my own district, I have the problems that you have here, hazardous waste and contamination of air, water, and land, but having this waste disposal obviously proposes a unique set of problems for small businesses. The Federal Government has active laws to cleanup and protect our environment and these laws and all the acronyms have been cited. These are the result of long study on what was best for the public good, and particularly public health.

What are the anticipated laws and what is the impact on you, small businesses? What is the impact especially on those people in meeting the requirements of these laws, and particularly as it relates to the extension of credit lenders who must minimize exposure of their loan portfolio?

Small business must comply with environmental laws, et cetera, et cetera. This situation has created a dilemma. Lenders are leery about extending credit to small businesses in these environmentally sensitive areas because the cleanup and control of hazardous materials often exceeds the equity of the small business. Small businesses such as drycleaners, transshippers and electric platers have run into the lack of credit as a stumbling block. Each of these businesses provided service for the community. Each small business provides work for our people and, more importantly, fills the need for the products that they generate. The Small Business Administration [SBA], is the proper agency to help businesses with these environmental problems. EPA is the agency responsible for protecting and cleaning the environment. Both agencies can and must do more for small businesses involved with the environment in order to survive. They must help with the credit crunch and meet their obligations.

So today we are here in the Bronx, next month we will be in Los Angeles. The problems of access to capital for environmental remediation are affecting all businesses from coast to coast, not only here in the Bronx, but also my native home, some 2,700 miles across the country. These problems are evidenced, Mr. Chairman, from your district, in the beautiful city of Portland, OR, to the very ports of Jacksonville, FL, and I dare say that all 445 Members of the House of Representatives know cases in their own districts where small businesses are having problems because of lack of access to capital for environmental remediation. This is a problem that cuts across regional and political lines. Contaminated water,

hazardous waste seepage, acid rain, have no regard for race, color, creed, or national origin. So, as we look at the cost of small businesses, we must be mindful of the cost to our own communities in general. We can help small businesses deal with the complexities of environmental remediation. The EPA must exercise its authority to the fullest to minimize costly cleanup and seemingly irreversible contamination to our water supplies.

Ladies and gentlemen, we have a new administrator in SBA, we have a new administrator at EPA, new opportunity to work together. My hope is that we can explore these problems here in the Bronx. We will also get the attention of the OPA and the SPA. Our goal is to produce results for small businesses having these remediation problems. So I commend Mr. Engel for requesting this hearing. I commend my colleague Mr. Wyden for coming here and certainly we will be moving across the country doing this in the great interest of the small business community. Thank you.

Chairman WYDEN. Chairman Torres, thank you very much for an excellent statement.

I think it is quite clear you speak for the majority of the Members of Congress in terms of dealing with these challenges. Your articulate statement really lays out the challenge for us and it is a pleasure to be able to work with you, our subcommittees do work together very often in this section.

Chairman TORRES. Thank you, Mr. Wyden.

Chairman WYDEN. Mr. Haynes, we will pick up with you.

TESTIMONY OF WILLIAM E. HAYNES, PRESIDENT AND GENERAL MANAGER, HATHEWAY & PATTERSON CO., INC., MANSFIELD, MA

Mr. HAYNES. Mr. Chairman, members of the committee, good morning. I am William E. Haynes, president of my company, Hatheway & Patterson Co., Inc., of Mansfield, MA. My company has been in the wood-treating business since 1927 and currently we employ about 45 people on annual payroll of about three quarters of a million dollars.

My company produces a wide range of pressure treated wood products, both industrial and heavy construction items and also residential items, such as lumber for backyard decks, landscaping, and fencing. We currently meet every environmental regulation. However, we have had to make considerable effort to correct unfortunate, but not ill-intended past practices. During the past 15 years we have had to make extensive modifications to our process equipment and our operating practices to achieve a zero-discharge operation. We should note that these process changes necessitated some product changes, which in turn required changes in the marketing of our products, thus compounding the overall problem. To correct problems caused by past practices we have eliminated sources of potential releases of hazardous materials, drastically reduced the generation of hazardous waste within the process equipment, undertaken extensive hydrogeologic studies of the process plant location, and installed systems to remove substandard groundwater and recycle it into our manufacturing process.

Lest you get the wrong impression, I want to take a moment to assure you that if you visit our manufacturing plant you will find

it neat, clean, orderly, well engineered, and well maintained. We actually have a small stream flowing through our 38-acre facility, complete with a rather quaint waterfall. With extensive and expensive testing we have demonstrated that the water quality in that stream actually improves as it passes through our plant, perhaps due to the aeration by the waterfall. My own children and the family dog love to play in that stream and I do not have the slightest reservation about their doing so.

All of our environmental improvements have been costly, and we have also found it necessary to expand our operations to generate the necessary cash flow to support the costs of environmental protection and remediation, and to pay the overhead costs of managing these programs, such as the employment of a full-time environmental affairs and safety director. All of the environmental issues effect the financial condition of our business, and it is the effect of environmental concerns on our capital raising ability that I wish to address here today.

Over the past several years, we have experienced an ever-increasing reluctance on the part of banking and other financial institutions to lend us money for any purpose. In the invitation we received to appear before this committee you expressed a concern that "small businesses have special problems obtaining capital to finance environmental remediation." I feel it very important that you appreciate that the problem goes substantially beyond obtaining capital for environmental remediation to that of obtaining capital for any purpose whatsoever. You have correctly perceived that an environmental problem can destroy the value of a businesses' collateral; however, even a potential or perceived problem can have the same effect.

The net effect to us of the financial liabilities created by the Comprehensive Environmental Response, Compensation, and Liabilities Act of 1980, and the Resource Conservation and Recovery Act of 1976, and an equivalent Commonwealth of Massachusetts law such as MGL chapter 21(e), is that no bank will lend us money secured by a mortgage on our real estate. Of course, we must continue to pay off the existing mortgage with the resulting cash drain. When we need additional buildings or real property improvements, many of which have an environmental protection benefit, we must finance them with our internal cash flow—a tough thing to do. When financing new production machinery or equipment, we find that the banks will loan the value of the machinery as individual components, but we have to absorb the cost of construction and assembly which as a rough rule of thumb is about equal to the raw machinery cost. In the area of working capital financing secured by inventory and receivables, we find that we receive less flexible terms than appear to be standard in the banking industry. For example where banks typically allow other wood product manufacturers and wholesalers financing up to 90 percent of their accounts receivable less than 90 days old, we get a more restrictive limit of 75 percent of receivables less than 60 days old. We experience similarly more restrictive financing of inventory. Additionally, with an overall limiting cap on the amount we can borrow, the net effect for us has been that for most of the time in the past several years, our bank really has been secured with our

receivables alone, and our extensive inventory has been almost irrelevant as a means of generating working capital. I must add, however, that these issues do not appear to have resulted in our having to pay higher than normal interest rates.

The cloud of environmental issues also has reduced the willingness of some banks to consider lending us money on any basis, for any purpose, with any security. We have been told directly by two major Boston area banks that they will not consider us as a customer for any type of lending as long as there are any unresolved environmental issues facing our business. Apparently this attitude arises from fears and some actual legal cases that the lending institution may be considered to be another deep pocket potentially responsible person if its customer becomes unable to meet costs of environmental remediation.

Another consideration in this issue may be that environmental liability insurance is unavailable. As are almost all companies, we are forced to go naked in this area due to the inability to obtain insurance even for sudden catastrophic events which could damage the environment and thus incur cleanup costs. I get the impression that, regardless of what is written in the laws, the banks have a lower level of confidence in their security interests when environmental issues are involved with a customer as contrasted with other potential disasters that can strike any business without warning such as, for example, a product liability claim. My experience also tells me that banks, while recognizing all of the situations that I have discussed, have not developed any in-house expertise in environmental matters to help them make decisions which could be of benefit to their customers.

In view of all the pressures and problems I have mentioned, I consider our mere survival in business to be quite an achievement.

As environmental laws have evolved, it appears to me that an underlying principle is that if there is an environmental problem with the land, the Government looks first to the landowner to assume all the cost of correcting that problem. If the landowner were to discover a windfall asset associated with his land, say an oil discovery or buried treasure, the Government would be right there to share in his good fortune by way of taxation. In the opposite case of the discovery of a major liability associated with the land, would it not then be fair for the Government to assist the landowner in his misfortune? Beyond the rhetorical question, I do have a few suggestions I would ask you to consider:

Perhaps some mechanism of Government loan guarantee could be created along with the development of specialized expertise in these environmental matters within the SBA. Perhaps the language in law and regulation can be clarified to strengthen the confidence of banks in their security interests in nonreal property assets. If private insurers will not write insurance for sudden catastrophic occurances resulting in environmental damage, perhaps a Government-sponsored program similar to Federal Flood Insurance could be established. Perhaps tax law amendments could permit special sinking fund arrangements from current operations to meet anticipated future costs or to allow amendment of past tax returns to account for now realized liabilities from operations. Perhaps

Congress could mandate a cost containment program for environmental testing and remediation progress.

Let me give an example of my last suggestion: The EPA has very rigid protocols for environmental testing. I have watched this testing being done and I have paid the bills. Suppose there is a need to sample soils or groundwater at some depth below the surface. This usually entails drilling of a 2-inch hole to that depth. Whether or not a well casing is placed in the hole, EPA procedures require the hole be grouted with a special sealing material, an effort and expense which at least equals the original drilling. This requirement is apparently prompted by a concern that contamination, say from an old settling lagoon, could pass through the drill hole in a nonpermeable stratum and contaminate another zone. In my experience, I have seen this procedure followed with exacting care by our consulting environmental engineers, when the soil samples taken every 2-feet in the borehole clearly indicate highly permeable soils all the way down. All that effort to prevent water from flowing through a 2-inch hole when it can almost just as easily pass through the surrounding acres of permeable soils. Could not more discretion be given to the project scientists and engineers to make cost-saving decisions, thus reducing the financial burdens on the person paying for the studies? If it is reasonable to consider cost containment in health care, is it not reasonable to consider it in environment care?

As a final comment, Mr. Hall has discussed the potential impact of proposed RCRA rulemaking on our industry. I have read the proposed rule and see that the only possible means of compliance by our business would be the full enclosure of our operations by what would have to be a huge building. Such a huge building would require a full water sprinkler system for fire protection in accordance with the Massachusetts Building Code. I reasonably estimate that the sprinkler system alone in this huge building would cost more than my business has earned in its entire existence, and remember, it would be real property for which no bank will currently lend me 1 cent. I will let you draw your own conclusions of the net impact of such regulation.

Thank you for giving me the opportunity to appear before you this morning.

Chairman WYDEN. Thank you very much, Mr. Haynes.

We thank all of our other witnesses too.

[Mr. Hayne's statement may be found in the appendix.]

Chairman WYDEN. To begin questioning, we will recognize our colleague, Mr. Engel.

Mr. ENGEL. Thank you, Mr. Chairman. I just have a few quick questions.

Mr. Seitz and Mr. Haynes spoke about problems with obtaining credit from banks, and you spoke now to there being no pollution liability insurance. I was wondering if you have found problems with liability insurance that make it difficult for you and your industry to obtain credit?

Mr. SEITZ. Definitely; the domino effect—you talked about banks; one of the reasons banks don't want to give any loans is they don't want to wind up with the contaminated site, and the reason they would wind up with the contaminated sites is the economics

doesn't permit a small business to pay for the cleanups. The insurance companies, several years ago, decided that with pollution and everything that followed, that they no longer wanted to buy into that. They phased out even their basic pollution coverage, so it is literally there is no way small business could pay for it other than out of our own pocket.

Mr. ENGEL. Are any of you on the panel aware of many businesses—specific instances where businesses have been forced to close due to the problems, toxic problems we have mentioned?

Mr. SEITZ. We have had a couple. I wouldn't say neighborhoods, but what we are concerned about is looking down the road for the future as the problems become more known.

The gas station, that's another situation closely related to the drycleaning industry. It has happened years ago but there is no leverage.

Mr. ENGEL. Has there been an acceleration? Have you found in your experience it has been that you have been moving on and the problem is getting worse and worse as a result?

Mr. SEITZ. It is not a question of the problem getting worse and worse, the problem really has been there for a long time. What has happened is there is more awareness on the part of the public and Government and so what was left lying foul now is coming to the surface. That's the problem.

Mr. ENGEL. Ms. Dalia.

Ms. DALIA. I also want to stress that there have been quite a few instances where a lot of these stations, service stations, have been closed because of requirements in the nozzle in the specific nozzle; a lot of these dealers didn't have enough money, enough funds to cover the replacement of these nozzles and because of that fact they have to turn over their businesses to the company or to other dealers, because of that situation.

Mr. ENGEL. Mr. Hall?

Mr. HALL. Thank you. Several of the wood-preserving industries have found it necessary for environmental and other reasons combined. In any case it is difficult to say environmental cost alone. This has certainly been a significant factor in quite a few cases. I have offered to provide some further documentation for the record on those. The problem also is the changing of regulations. Mr. Haynes mentioned that it was necessary to comply with the Clean Water Act, zero discharge. Many companies which did that found that subsequently they were left with some ground water contamination which now requires mediation. In order to comply with one particular statute's commentary and subjective regulations issued by the EPA and corresponding State agencies like EPA, it has resulted in other contamination having to be cleaned up.

Our objective is to try and find the combination of statutes and the answers which will afford chasing that molecule of chemical from one media to another and still getting it taken care of, once and for all. There are changing conditions and problems created, but one solution needs leads to another problem. Thank you.

Mr. ENGEL. Thank you, Mr. Chairman, I have no further questions.

Chairman TORRES. Just a brief question based on Mr. Haynes' presentation. I see Mr. Hall is coming from Falls Church in Virginia. You represent the National Wood Preservers Association?

Mr. HALL. American Preservers Institute, which is a national organization for the wood-preserving industry across the country.

Chairman TORRES. Mr. Haynes, you talked about in your statement, correct, problems caused by past practices. We have eliminated sources of potential leaks of hazardous waste materials, I am reading from your statement on page 2, I guess. To drastically reduce generation of hazardous waste in the process equipment that you have undertaken extensive hydrogeology studies of the process by location. Now, you talk about the installation of systems to remove substandard ground water. You are actually involved in the ground water extraction in your process?

Mr. HAYNES. Yes; I don't want to cite exactly what regulation we are working under. I think our legal responses are to the Massachusetts Department of Environmental Quality of Engineering, but we are undertaking excessive site survey assessments and actually previously to the Massachusetts agency coming in to tell us to do this, we had already started it and already installed ground water wells and had taken the water out of the wells and used it.

Chairman TORRES. You use it in your process, how do you dispose of it?

Mr. HAYNES. Again, we are a zero discharge plant. We are basically using water to mix up the chemical.

Chairman TORRES. If the chairman would allow me to spend the time, you use chemicals to preserve raw wood.

Mr. HAYNES. That's correct, sir.

Chairman TORRES. Would you tell me what the chemicals are for and what they do?

Mr. HAYNES. The chemicals involved basically are wood preservatives. I am sure most people in the room are familiar with pressure treated lumber, that which is normally used around the house has a greenish color to it.

Chairman TORRES. Patio decks?

Mr. HAYNES. We also get involved in other products, in addition to products, utility poles, highway posts, things of that nature.

Chairman TORRES. In the use of these chemicals and preservatives, you say you have zero discharge, I assume the chemicals you use must have some residue, am I correct?

Mr. HAYNES. Yes, sir, we do, and we feel we have a zero discharge plant. We do generate hazardous waste. The waste is all solids basically, I think, like things that fall into the plant and get removed in the filters and the strainers and the pipes. We generate 7 55 gallon pipes per year.

Chairman TORRES. Mr. Chairman, I have no further questions.

Chairman WYDEN. Thank you, my colleague.

Have any of you had experience with the SBA programs in terms of pollution involvement, and, if you have, what has your experience been?

Mr. SEITZ. Not specifically with pollution, but our relationship goes back many years ago, which at one time was, I would say, in the mid 60's, about 1970, early 70's, and ever since, very, very little activity.

Chairman WYDEN. That is the problem. They simply do not try to reach out and get the word to small businesses. There have been several programs on the books, even now there has been one program, the 7(a) program. Have they not tried to reach out to your small businesses?

Mr. SEITZ. Not to our knowledge.

Ms. DALIA. I guess in terms of loan, most service stations, the property is owned by the company, so we are basically dealers, operators of the service stations and I think it does become a problem to go to SBA for certain types of loans and gas tank leaks and nozzle problems, so it has become sort of like difficult in terms of obtaining these loans because we don't own the property.

Chairman WYDEN. I would assume that for most of the service stations dealers, just because you don't have collateral, as you say, unless you have something to put up, these programs, as they're presently written, are just out of reach?

Ms. DALIA. I guess so, yes.

Chairman WYDEN. This is one thing we are going to want to inquire into further because the SBA has had programs on the books, in fact one of them being strengthened now. I don't find any small businesses that seem to be using them, and I don't find them trying to reach out and get the word to small businesses. I don't find them spending any time trying to address the specific instances like having collateral, and you all have given us some very helpful testimony on your problems and particularly your experiences with SBA which ought to be on the front lines in terms of getting small business access to capital.

One last question I have to you, Mr. Hall: Are there instances where some of the environmental laws are duplicative in terms of trying to meet the various standards that wood preservers are called upon to deal with?

Mr. HALL. There are several instances where EPA has in some aspects RICRA, others, under Clean Water Act, and they select the statute that best meets those needs. TOSKA also is on the books as a bridge for coverage for existing laws. Generally it is not so much a conflict as it is opportunity for a variety of these groups to recognize you.

Chairman WYDEN. Let me ask you, just for the record, to furnish to our committees a list of the instances where you feel there is duplication in the environmental laws as it relates to the wood-preserving industry, and the reason I ask is you have essentially given us your testimony; is it your view that by consolidating the environmental laws as it relates to the wood-preserving industry, it would be possible for this country to have both an environmental cleanup and a healthy, prosperous wood-preserving industry; is that essentially your position?

Mr. HALL. It is not so much consolidating, it is selecting from other various statutes that portion, and deriving at a single rule for the industry.

Chairman WYDEN. I would be very interested in seeing that. Chairman Torres, we will have his leadership as the chairman of the Environmental Subcommittee. You are aware of how important these issues are in my part of the world and I want to work with Chairman Torres and also Congressman Engel.

Mr. SEITZ. One another point I wanted to make in that regard, not only on the different regulations where they impact differently with the same business, but from State to State you have different regulations so that a drycleaner in New York is different than a drycleaner in Jersey when it comes to regulations, and we think there should be some uniformity in regulations. I recognize that there are more cleaners in New York, let's say, than in——

Chairman WYDEN. But the problem is still the same and I think that is something we would appreciate for consideration, consistency of regulation so that everybody knows what they are responsible for.

Do my colleagues have any additional questions they care to ask at this time?

Chairman TORRES. No; I have no further questions, Mr. Chairman.

Chairman WYDEN. All right. We thank you all very, very much and I know we will want to work very closely with you in the upcoming period.

Our next panel is Elizabeth Worth, Pittsburgh, PA; John Campbell Jr., former Assistant Secretary at EPA. Ms. Worth, I believe, cannot join us today.

Mr. Campbell, we welcome you. We appreciate your coming, also a long way. I think you heard us go through the formalities earlier. Do you have any objection to being sworn as a witness?

Mr. CAMPBELL. Not at all.

John Campbell, having been first duly sworn, was examined and testified as follows:

Chairman WYDEN. Since your associate couldn't be here, we will let you have 10 minutes, her time as well for your testimony and also make your prepared remarks part of the hearing record on their entirety.

TESTIMONY OF JOHN M. CAMPBELL, JR., MANAGER, ENVIRONMENTAL PROGRAMS, GENERAL ELECTRIC CAPITAL CORP.

Mr. CAMPBELL. Thank you very much Chairman Wyden and Chairman Torres and also Congressman Engel. I am delighted to be here with you today to try to discuss with you some of the issues that face us as lenders, but before I do that I would like to give a brief description of who I am and what the General Electric Capital Corp. does. I am probably, as far as I know, the only person in a capacity like my own that is reviewing issues that arise in the environmental field with our various financial transactions.

The General Electric Capital Corp. is a large financial services company that lends to businesses of all sizes, ranging from the smaller independent operators to Fortune 500 companies. We participate in the lending in various markets ranging from commercial equipment to corporate refinancing, corporate restructure, projectability financing for construction facilities, and also other numerous areas including retail credit.

So we have experience, I think, in dealing with just about all of these environmental problems that you have heard about earlier. I think the first question I would like to pose and try to answer is really why are we here? I think the answer to that question is we

are here because of two things: One is intensive environmental problems which have arisen over the years due to practices we thought were perfectly safe 5, 10, 15 years ago, but we have now come to learn over the years were in fact causing problems.

The second reason I think why we are here is that we have drafted, prepared, and are now implementing environmental programs. These programs in some respects have a fairly serious consequence on the way we have to adjust our programs as lenders. I will get into that in a moment. The two principal programs we are talking about probably need no introduction, but I will do it briefly anyway. First is Resource Conservation and Recovery Act. This law is designed to effect the management of waste going forward and is designed to insure waste management practices to protect human health in the environment.

The second program is the famous Superfund Program, Comprehensive Environmental Response, Compensation and Liability Act. I would like to discuss with you before proceeding on, the two kinds of risks that lenders face given these two programs, and try to describe for you some of the ways we have to respond to those risks.

Under RICRA, Correction Action Program, lenders currently face creditors with a number of loans that we wish to entertain. Perhaps one of the most significant reasons for this is that the Corrective Action Program as it currently stands requires two things: Clean up to levels, which in some cases are as stringent as minus 7 risk or 1 in 10 million chance of contracting cancer, to facilities—below, actually, the ground facilities that treat, store, and dispose of hazardous waste. The credit here arises from the facts that the borrower, the person related to, in fact, is obligated to cleanup that facility to those stringent levels. When we figure out what the cost is to undertake those cleanups, the cost is often times in excess of the value of the corporation we are seeking to finance.

It is not at all uncommon in fact to see costs as much as two or three times the value the corporation is trying to finance. So the first problem of the Corrective Action Program is really the cleanup standards themselves. The second element is the fact, I think some of the earlier witnesses mentioned to you that currently, if you are the owner of a facility and wish to borrow money, you are liable not only for your own practices in waste management, but for those of every other predecessor corporation company. Even though practices may be adequate or better than adequate, you are still basically obligated to take care of past practices.

RICRA also contains what is called the closure program, which requires facilities when to meet cleanup standards.

Briefly, in order to move on, Superfund also can impose a credit risk because Superfund can be used to cleanup both abandoned commercial hazardous waste facilities, as well as the facilities of many of our customers. Now, the second risk that is important to us as lenders that we need to talk about is what we refer to as lender liability. Under the Superfund statute right now lenders themselves may be held liable for hazardous waste cleanup and the borrower's facility, under certain circumstances, if the borrower defaults under commitment to the lender. This is possible because the definition as it now stands of Superfund of the exemption for lenders reads that they are not subject to liability as long as they hold

only indicia of ownership to protect in effect their security interest and do not become involved in operations of the facility from which the release took place. The Department of Justice filed two key case and are now prosecuting those cases in which case the lenders are being judged as liable for the behavior or for the practices of the borrower, in spite of the fact that all they did was attempt to recover as much of the value of the property as possible in a foreclosure situation.

So the erosion of the so-called lender liability provision under Superfund rates a real spector of liability risk for lenders. A second concern here, however, is equally important, and that is that because the language says that we may not be involved in the operations of a borrower in order to preserve lender liability exemption, we cannot be involved in helping the borrower who is running into financial problems in what we refer to as a work-out, where you are attempting to avoid foreclosure and you want to get the customer, that is the borrower back on their feet. If we do that, that is precisely what the EPA and Department of Justice have used as the basis for their lawsuits against two lenders in the, so-called in this case, Mirable and Fleet Factors cases.

The third problem, I think, that arises in lender liability is the fact that commonly we participate with our borrowers in the upside of their investments; that is in order to reduce the cost of capital to borrowers, we'll agree to take an equity position in the borrower's company in return for a lower interest rate. However, by doing that under the interpretation now that EPA is developing, we would become owners of the facility for the purposes of the Superfund. So what had been a common and fairly attractive measure in borrowing for businesses, especially small businesses, now would appear to be foreclosed because of the interpretation again of the so-called lender liability issue. Now, clearly the problems I just described, the lender liability issue and also the credit-risk issue do not affect all companies and lending in the same way. Clearly, they affect smaller businesses more so than larger businesses, but that is for a series of reasons.

I think there are two important reasons that I would like to focus on: One is because most of our lending for small businesses is done on a nonrecourse basis, which means that we take an interest as collateral in their equipment or in their real estate, but we do not have recourse to the business as a whole and, in fact, oftentimes small business has relatively limited assets in the first place. But the problem with the nonrecourse lending, of course, is that by doing that we have limited opportunities for collateral to secure the property, to secure the loans, and with the limited collateral it is not uncommon to run into a situation where that collateral is severely impaired by an environmental problem. You heard mentioned earlier testimony concerning underground storage tanks and also other facilities.

I would like to skip forward just a little bit to describe what we are doing right now and what I think some of the issues are you may wish to consider in terms of ways of fixing these difficulties.

The first thing we are doing is practically requiring, as a matter of course, environmental audits for all of our customers, especially in the industrial field. We do this for 3 years. It gives us a basis,

first of all, for deciding whether or not the credit risk is substantial enough to preclude us going forth with lending. We do it also because we want to provide the defense for the borrower under the so-called innocent land owner defense under Superfund.

Third, we do it because it is a basis for contractual risk sharing between buyers and sellers in the market.

The second thing we are commonly doing now is requiring that certain environmental problems as stipulated and several agreements or other documents with the Government be fixed as a condition of providing finance. Fixed oftentimes involves us providing the capital for the fix which is fine, but the problem here is that many small businesses do not have sufficient cash flows to be able to accommodate it. The third thing that we do commonly, although it is becoming less common today than it was in the past, is requiring indemnifications when in fact we are financing the purchase of a business or the purchase of equipment or property. We would require that the borrower obtain indemnification for himself. The problem now with this is that increasingly sellers are becoming unwilling to sell property giving indemnification, when they have no control over the buyer. Usually stronger companies are less willing to provide an indemnification than are weaker ones.

What to do about this? One proposal that I think may have some merit is the idea of a loan guarantee program. Depending on how it is structured, this perhaps could give better assurance to borrowers and to lenders, but I think we need to go beyond this, Mr. Chairman. I think we need to consider the various problems and the problems of the three commissions of Superfund and RICRA which currently are causing the problems that you have heard earlier testimony about. I would like to describe what I think those problems are, and possibly suggest to you some reasons why it might be useful to consider these issues.

The first problem is the lender liability provision itself. As it is now drafted EPA is continuing to use the lender liability as a means of funding Superfund cleanups. The second is what I would describe as the innocent land owner defense under Superfund. Currently it is provided, but it is a very limited defense and it is very hard for a borrower business person to be able to substantiate their innocence under that provision.

The third issue, I think, is the standards themselves, the cleanup standards, that is. Certainly we must have cleanup standards to protect human health in the environment, there is no question about that. The question is do we need cleanup standards that would allow for someone to put literally a straw below the facility to drink the water without any treatment below it or is it sufficient to ensure all private and public sources of drinking water is protected and all surface water is used for commercial fishing and drinking purposes. I think there is some useful purpose for thinking about this issue in particular.

In closing, what I would like to do is to suggest a few things about how capital markets operate in the country. To suggest why it is important that we consider some of these issues in thinking through what are the next steps that ought to be taken.

The first point is capital freeze closing in this country, it goes to the highest and best use, which in terms of economics means, it

goes to the source of business that will provide the greatest amount of return for the least risk. If we don't address these business risks I mentioned earlier, that is the lender liability risk and the credit risk that borrowers themselves face, I don't think we will be able to deal with the broader question of where capital flows to because ultimately if we cannot address that risk what will end up happening is the capital will flow to those other uses which are suboptimal perhaps, but nevertheless are better because they pose less risk both to the borrower and to the financial services company.

I also don't think this is a problem unique to small businesses, although it is clearly most severe for small business, and the reason I say that is that the same problem you can see in instances where larger companies decide not to make investments, why do they decide not to make investments, simply because in many cases environmental problems are too substantial.

Another reason why I think we have to consider the question more broadly is the fact there are serious down-side effects to the economy and to society if capital is divested. Among them, just to list them, demographic changes as businesses find it simple to locate outside of major urban industrialized areas because there are less contamination problems.

Second, changes in employment debt as there is a shift from lending and from investing in larger manufacturing facilities to less—manufacturing less hazardous waste. More concentration, that is economic concentration, and you heard earlier testimony about how small independent filling stations were having difficulty getting financing, it is a classic case. It is much easier for the large corporation to get financing to deal with these issues than it is for the small businessman.

Fourth, I think the last impact I would like to talk about is changes in economic growth, in fact, reduced growth and reduced real partner income. Again, if we don't address these issues from the standpoint of what the cause of the problem is. I'm not suggesting a wholesale reconsideration of Superfund and RCRA. Indeed, I am only suggesting that the existing provisions which already exist be amplified and clarified so that we know who the innocent land owners really are, so we know lenders are not liable as long as they are not engaging in business activity, and so that we know the cleanup standards are designed truly to protect human health in the environment and not simply to eliminate contamination. That is the end of my presentation.

Chairman TORRES. Thank you, Mr. Campbell for a very good statement giving us clear notions about the problem and, perhaps, let me try, if you will, to make sure I understand what you said in your testimony.

First of all, you may be reluctant to extend credit because there may be some real collateral. If the business is trying to buy pollution control equipment or just to cleanup an old spill, we know that is going to increase business capacity. So often a pollution controller seems pretty unattractive just from that standpoint, am I correct?

Mr. CAMPBELL. That is a very good question, Mr. Chairman. Let me try to address that in detail.

I think there are several issues that come about. If the pollution control equipment cannot increase productivity and is not going to add capacity, then clearly it has to be financed based on what the value of the company is aside from that piece of equipment. There may be sufficient collateral in the company itself to finance, there may not be. Let me raise another concern that would be more pertinent to me and that is what does the piece of equipment do? Does it generate a waste which is regulated under the Resource Conservation Recovery Act and subject to some restrictions under that act, if so I would ask a set of other questions about the liability the borrower may have. I would ask set of questions about our liability. So that even if we got beyond the question, whether there was sufficient basis for lending of the equipment, I would have to ask myself the same kind of questions I was just posing about liability and credit risk the borrower may be taking.

Chairman TORRES. It seems to me even if the loan request has nothing to go do with pollution control, you still might be cautious, is that right?

Mr. CAMPBELL. We have to be, I'm afraid, it is not that we want to be. Indeed, I think one of the reasons I was hired is because General Electric Capital Corp. wants to make loans and we don't want to be frightened away from them, but the problem is, frankly, when you get into these issues in detail. When you are looking at a small business that does not have a lot of capital and you find a problem that when priced out to meet EPA standards it is going to cost twice or three times as much as the value of the corporation, you have no choice.

I would like to see those problems fixed. I would like to work with people who would like to see these problems fixed. It isn't going to happen overnight, but I think it is—I think it is politically doable and technically doable. In fact, as I listened to the other witnesses this morning, I am struck by the fact that I think all of their problems could be fixed by the simple solutions I just suggested.

Chairman TORRES. Perhaps this is the same answer you would give me, but I am trying to phrase it differently. If there is a possible solution to the liabilities. You're worried as a lender you may be caught in the trap yourself and become directly liable, am I correct?

Mr. CAMPBELL. That's correct. To be more specific about lender liability, if we are in a situation where we have borrower, our normal practice is to work with the customer as long as is possible. We carry customers, in many cases, much longer than our loan provisions allow or would provide for simply because we want to work their situation out. However, under the existing interpretation the Department of Justice has, the very actions that we would take in trying to help the borrower work out the financial problems are actual actions they would use to determine we are now an operator of the facility and, therefore, liable. As I mentioned earlier too, our lending practices which are designed to help a small borrower, if it does not have large cash flow, that is the equity participation now is being interpreted by EPA in a series of policy memoranda as a basis for liability. Now, we don't want to create environmental problems. I'd just as soon we find the solution to

problems, but the fact is the practices we want to entertain, which are good, sound financial practices for us and our customers, are exactly the same practices that get us into lender liability, and to me that doesn't make a lot of sense.

Chairman TORRES. I took some notes here on your testimony as you were spelling out some criteria, and if I could understand, even if you grant credit you might impose restrictions upon the borrower because of your own pollution worries, and you cite the agent accession of, first of all, having an outside engineer to come and do an audit; am I correct?

Mr. CAMPBELL. That is correct.

Chairman TORRES. You also talked about the cost that the audit will take, who pays that cost, the company?

Mr. CAMPBELL. The borrower pays that cost, and, by the way, all of that, of course, has to be figured in with their cost of capital.

Chairman TORRES. You might require to protect a lender from paying environmental costs, perhaps personal guarantees?

Mr. CAMPBELL. That is correct.

Chairman TORRES. Would you require a higher interest rate on a loan to cover some of these costs?

Mr. CAMPBELL. We haven't gone to that extent yet. I say yet, because we still are treating most of these issues as ones where we can either mitigate through various practices you just mentioned, or where we simply can't lend. The problem we face, Mr. Chairman, in trying to adjust the interest rate is the market won't allow that, and there is no basis for us judging interest rates should be 11 versus 10 percent or 12 percent versus 13 percent. Unfortunately, what this means so far is we are basically going to underwrite the loans or not be able to make the loans. Most of our brethren, I think, in the industry, are faced with the problem of basically making a decision, they either make the loan or there is no problem.

Chairman TORRES. What about a loan at a higher interest rate as a substitute for interest?

Mr. CAMPBELL. We can certainly look at that opportunity.

Chairman TORRES. Have you done it?

Mr. CAMPBELL. No.

Chairman TORRES. But you can?

Mr. CAMPBELL. We can imagine doing that to get around the limit liability problem, but again the problem we would then force on the borrower is their cost capital would go up and there would be many transactions we wouldn't be able to finance because of the cash flow limitations.

Chairman TORRES. In your understanding, are there other venture capitals that perhaps have this practice of increasing the interest rate as a substitute for taking an equity position?

Mr. CAMPBELL. I'm not aware of any in the financial services industry that have done that.

Chairman TORRES. Thank you, Mr. Campbell, my time has expired and I will turn the microphone over to my colleague, Mr. Engel.

Mr. ENGEL. Mr. Campbell, I want to understand what businesses are most effected by the situations that you have described; would

it be fair to say the smaller the business, the most cautious you would be about extending presented credit.

Mr. CAMPBELL. That is a good point, Congressman, I think that is true for a couple of reasons: One is that when those cleanup standards applied to a small business, generally, the revenues of that small business are substantially less, but the environmental problem may be equally as great as it is for a large company. So it is a percentage of their returns, if you will. It is much a greater percentage, and the segregated is as I mentioned, most of our lending to small business on a nonrecourse basis and to the extent it is on a nonrecourse basis, we have found it more difficult to acquire problem collateral to underwrite. For those reasons, it is larger small businesses that have the most acute problems. Certainly, larger businesses have these problems too and those have a social side as effects, but certainly small businesses have seen it.

Mr. ENGEL. Would it be fair to say there are certain classes of business that imposes before—wood preservers, paint manufacturers, for example.

Mr. CAMPBELL. One of the things I did notice very quickly in the business when I came in from EPA was that treatment storage and disposal facilities, are clearly facilities that have the greatest amount of risk. Second, I think it had to be the manufacturing businesses that use large quantities of hazardous substances either in their processes or as a part of the product. Metal finishers certainly are ones that use a lot of those hazardous substances. But you know, it is interesting, one problem we went into when we do our audits is that you may be financing a person to buy a piece of property that has been something else, and when you go out to do the audit on the property you find that the prior owner had a totally different business that he had created an enormous problem. Those problems, of course, would be problems that your borrower, the new owner, would actually face up to the correct interpretation of the innocent land owner provision as it actually works out.

Mr. ENGEL. What you are saying is the safest businesses are really service-oriented businesses rather than manufacturing.

Mr. CAMPBELL. Service and retail are clearly safer. Interestingly enough, of course, I think we would classify gasoline stations and drycleaners as service businesses and yet you heard earlier those businesses have their problems too. It's funny, most of the people I work with in GE Capital aren't even aware of the businesses that have these kinds of problems. Certainly the dry cleaners and gasoline stations have less problems than manufacturers do generally.

Mr. ENGEL. The safest place to loan money, what would you say, is a place that has never been developed, for a brand new site rather than an old neighborhood?

Mr. CAMPBELL. Clearly a brand new site is much safer because there is no equipment in place, no contamination on it. It is almost certain to have no problem and be fairly easy to get through on the audit process.

Mr. ENGEL. The upshot of all this is for lenders, given a choice of a travel agency, say, for a public relations firm and a small factory in the Bronx.

Mr. CAMPBELL. That's a good question. Lenders obviously are in business to make money. They make money on the spread between

the risks that they assume and the rewards that they take. Now, that risk-reward ratio has been changed to some extent by these environmental programs, and I don't think I would be honest with you if I didn't say there is a lot higher risk now with manufacturing facilities than there is in service businesses located in the southeast that don't have any development on them. So, I mean, clearly it is true that those newer developments and the ones—businesses that don't have a lot of hazardous waste are a lot safer, and if other factors are equal those are better lending opportunities.

Mr. ENGEL. Really, what you are really saying is small businesses that are getting hit hardest are the ones in the Northeast, Midwest, Northeast, the old industrial neighborhoods that could use a good shot of capital and like the Bronx, like all the neighborhoods in New York City are?

Mr. CAMPBELL. I don't think it is unique to the Northeast or Midwest because you find older areas in other parts of the country. To give you an example, in southern California we had a terribly serious problem with an industrial facility. So I think it is all over the country, but generally it is safe to say that an industrialized area where the property has been used for many years, it is likely to be more problematic than if it is in a new area that hasn't been developed in the past.

Mr. ENGEL. I would like to explore some of your statements and thoughts on the present 7(a) pollution loan guarantees. The law now, as I understand, allows the SBA to guarantee loans of up to $1 million for pollution control facilities under the 7(a) program. That cap is $1 million; is that a reasonable amount?

Mr. CAMPBELL. I'm not familiar with the problem, but taking it as a given $1 million, if that's to purchase equipment for pollution control, it could perhaps purchase some waste water treatment equipment for a very small business, but it would be difficult to purchase a lot of air pollution control or, certainly, hazardous treatment equipment. It is not a very large amount of money, but we have to look at it in the context of what you were going to do with the money. What you needed to deal with in the way of the environmental program.

Mr. ENGEL. The loan guarantee program is for some percentage of the loan, and typically I am told 85 percent for a large loan. If such a guarantee were available, would it influence your decision on making loans?

Mr. CAMPBELL. I don't know if we have had any experience with SBA loan guarantee programs, to be very candid with you, Mr. Congressman, and I really have to take a look at what the loan guarantee provided for and how it worked out. We just haven't seen very many of them. I haven't seen any since I have come to the company, and I am not sure we have any experience with it.

Mr. ENGEL. Mr. Campbell, can you suggest some ways to better shape the pollution guarantee program? Can you think about it?

Mr. CAMPBELL. First of all, I haven't really seen how the pollution program would work. I raised the serious questions in my written testimony which I think needs some consideration because there are some difficult public policy issues. Frankly, I think, unless the loan guarantee program is combined with some address-

ing of the three issues I mentioned, lender liability, innocent land owner defense, and the actual standards themselves, and I am not talking about new legislation, other than a clarification, I don't think it will work and the reason I say that is that if we, as a lender, lose the upside opportunity of an equity participation loan, we are going to have to price that capital high, and if it is priced high a lot of people who now have access to cap that wouldn't have access to it.

The other problem, of course, is that the land owner themselves, borrowers themselves should not be, in my view, should not face liability for problems that some previous owner faced who may have done everything right, and we have had cases like that and you have heard them earlier today. So those problems, unless they are fixed and the standards themselves, the cleaning up to 10 to minus 4, to 10 to minus 7 is technically feasible in some cases and very expensive. We have priced it out in a couple of our audits and one facility we are going to finance, pricing at $30 million for cleanup, and that wasn't even going to make the standards, but the value of the company was $10 million. They had total net income of $70,000 in the prior year.

I think those are the important policy problems, and if they can be addressed in the context of looking at a loan guarantee program, the loan guarantee program work going forward, that is to buying pollution control equipment to guarantee that which would otherwise be difficult to finance, to me that would make a lot of sense.

Chairman TORRES. Thank you.

Mr. ENGEL. Thank you, I have no further questions.

Chairman TORRES. Thank you, Mr. Engel, for your questions. I want to thank you, Mr. Campbell, for your answers. Obviously, they are a great help to both committees in terms of developing the kind of legislation we will be looking at in the future as to how we might cope, how we might deal with enhancing ability for small businesses to overcome many obstacles. So we thank you for being here today. You are now excused.

[Mr. Campbell's statement may be found in the appendix.]

Chairman TORRES. We would like to move expeditiously.

I call for the next panel to come up now.

Karen Brown, who is the Small Business Ombudsman, Washington, DC; Mr. Edward Sullivan, who is the deputy commissioner, New York Department of Environmental Conservation; and Mr. Bert Haggerty, who is the Director of New York District, the U.S. Small Business Administration, SBA.

Thank you for being here today.

Chairman TORRES. Ladies and gentlemen and members of the audience, Chairman Wyden had to leave earlier for a previous commitment; I will probably have to do that myself later on. At this time, he asked me to stay on as chairman of my own Subcommittee on Environment and Labor.

What I will do now is turn the gavel over to Mr. Engel who is the Congressman in the district here and ask him to assume the chairmanship of this subcommittee hearing, and in so doing I give you the gavel, Mr. Engel, so you may proceed with the line of questioning here.

Mr. ENGEL. Let me ask all of the panel members, do any of you have an objection to being sworn in?

No; Bert Haggerty, Edward O. Sullivan, Karen V. Brown, having been first duly sworn, were examined and testified as follows.

Mr. ENGEL. Why don't we start with you, Mr. Haggerty.

TESTIMONY OF BERT X. HAGGERTY, DISTRICT DIRECTOR, NEW YORK DISTRICT OFFICE, U.S. SMALL BUSINESS ADMINISTRATION

Mr. HAGGERTY. Mr. Chairman, and distinguished members of the subcommittee, I am pleased to be present this morning to present the views of the Small Business Administration on this important topic. SBA involvement in the hazardous waste issue has taken two forms: First is our pollution control bond program which we have operated since 1976, which I would like to interject this program has been replaced by a new program as part of our 7(a). Second, to avoid liability under our other loan programs which rises in the event we take title to real property through foreclosure and collateral which is bound to have a hazardous substance problem.

The law in this area is rapidly evolving. There are a number of cases today for which lenders have been sued either for lack of due diligence in making loans or when they have inadvertently taken title to collateral which is subsequently found to have a hazardous waste problem. Lawyers go after potential defendants and the Government is often a target of such actions.

As both the lender and a guarantor of loans made by private sector lenders, SBA must exercise due diligence to protect the taxpayer from having to inadvertently assume liability for the cost of a hazardous substance cleanup. Please understand, this is not an antienvironmental position on behalf of the SBA It is simply that our regular business loan programs should be administered in such a way as to avoid cost to the Government for hazardous cleanup. It is only through making an error that SBA will find itself in such a position. Further, in exercising due diligence, SBA helps protect the environment by not financing activities that would result in environmental damage.

Mr. ENGEL. Mr. Haggerty, one moment. Could we please have a little order here. It is very disconcerting. In the back, please, we can hear the conversation.

Mr. HAGGERTY. The subcommittee asked us to address certain issues and I have organized my testimony around these questions. The committee's first question is whether small business has the special problem in obtaining capital to remedy environmental problems or to comply with environmental laws. Does the SBA have any statistics on small businesses approaching the agency for help in these matters or on small business failures associated with environmental liabilities?

Small businesses are generally at a disadvantage in obtaining financing of all types in the commercial marketplace. It was in order to help small business comply with environmental laws that SBA's Pollution Control Financing Program was enacted back in 1976.

SBA has no way to track business failures resulting from environmental liabilities, nor does it have an existing means to gather statistics on such businesses approaching the agency for help.

Two, does the SBA, in its assistance programs, discriminate, directly or indirectly, against small businesses with these problems? For example, would a small business trying to cleanup a hazardous waste spill on its land have a harder time getting assistance because of the potentially large liabilities and low collateral value attached to its land? Is the SBA more cautious in giving financial assistance to a business that may have hidden liabilities because of past waste handling practices? Does the SBA take special care in rendering advice to a business operating a site with hazardous waste for fear of incurring liability for future cleanups under Superfund?

You have asked whether SBA discriminates against small businesses that have these problems. While discrimination is not the correct term, an outstanding hazardous substance citation against a firm would certainly evoke a negative factor in a credit evaluation. It is doubtful that a lending program could be developed to provide such a funding source unless the extent of the contamination could be reliably established beforehand, and the borrower could establish the ability to repay, recognizing that such a loan would generate no income.

SBA is currently drafting policies and procedures which would require potential liability for environmental damage and/or cleanup to be considered in the loan making process. SBA's legislative mandate requires that reasonable assurance of repayment be present before financing is provided. Potential liability for environmental damages must be weighed with other credit factors in determining if repayment ability is present.

Three, does the SBA have any programs to assist small businesses having problems locating capital for those projects? Please describe the kinds of efforts the agency has made to help these businesses.

The SBA does have such a program. Under section 404 of the Small Business Investment Act, SBA has had authority since 1976 to guarantee pollution control bonds. The SBA must first determine that small businesses are or are likely to be at an operational or financing disadvantage with respect to the planning, design, or installation of pollution control facilities. Pollution control facilities means such property, both real and personal, as SBA, in its discretion, determines is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing, or storing pollutants, contaminants, wastes, or heat. In addition, funds may be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

Under this authority the SBA has guaranteed 268 pollution control bonds totaling $364 million.

Congress did not reauthorize this program for fiscal years 1989 and 1990, because of a lack of demand for financing in amounts that are feasible for bond financing. Instead, Congress amended the Small Business Act to make small businesses eligible to receive loan guarantees of up to $1 million under section 7(a) of the Small Business Act for the purposes just described. The limit to one firm under the previous program was $5 million.

The new authority within the loan program may better fit the type of demand we have experienced: Only four bonds worth $5.2 million have been guaranteed in the last 2 years. Proposed regulations for the recently authorized loan program were published in the Federal Register on April 28. A copy is attached to my prepared testimony. The new program will become operational when final regulations are published this summer.

It is important to understand that these are loans, not grants. In order to be approved, an applicant must demonstrate an ability to repay this loan, which will not in itself produce any additional revenue for the firm. The loan proceeds are to be used for protecting the environment and not for plant, equipment, or working capital to produce added income.

In the past the program has been used primarily for abatement, not to cleanup waste that has already occurred. A major problem in waste cleanup is the open-ended nature of many cases: If the ultimate liability is unknown, a lender is not in a good position to decide if a borrower is a good credit risk.

Four, one proposal to alleviate the difficulty of small businesses in getting environmental capital would create a Federal loan guarantee program, administered by the Small Business Administration in cooperation with the Environmental Protection Agency. Can the SBA comment generally on this idea? Given SBA's experience in other loan guarantee programs, could you suggest what percentage of the loan the Government would have to guarantee to effectively promote private lending? In other loan guarantee programs, what is the cost to the Government relative to the amount of outside financing attracted? Can you see aspects of an environmental loan program that would make it more or less expensive than average to run?

The existing program authorizes SBA to guarantee up to 85 percent of loans to eligible small businesses. Because of the third-party liability posed by this type of lending, it is more likely the loans will be made for equipment and facilities to abate future pollution rather than for cleanup of existing contamination.

This issue will continue to be problematic as long as there is uncertainty on the part of lenders and the SBA concerning their possible ultimate liability for environmental damage. To be successful, a loan program to provide this type of financing should require that the lender reach an agreement with the Environmental Protection Agency, as well as with appropriate State and local agencies, regarding both the suitability of the project with respect to regulatory compliance and the lender's and SBA's liability that may result from financing a business with potential cleanup liability.

Five, what other steps could you suggest to free capital for environmental remediation?

Since lenders will be reluctant to provide this type of financing as long as they see potential consequences for as yet undetermined environmental liability of a borrower, consideration may be given to some limited statutory relief for lenders under these circumstances. Such relief could also resolve a problem more basic to the credit decision in those cases which concern the value of property being offered as collateral by a borrower. We again recommend

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greater coordination and planning between EPA and the lending community prior to regulations being promulgated which may adversely affect commercial lending.

This concludes my prepared comments. I will be happy to answer questions. Thank you.

[Mr. Haggerty's statement may be found in the appendix.]

Mr. ENGEL. Thank you, Mr. Haggerty.

Before we continue, might I just say that we have the testimony and we will enter the testimony of all our witnesses into the record fully, so it will all be in the record.

I am wondering if I can ask Ms. Karen Brown to basically summarize your testimony in about 5 minutes, and your entire testimony will be submitted into the record and be part of the actual record of the hearing, in the interest of time.

TESTIMONY OF KAREN BROWN, SMALL BUSINESS OMBUDSMAN, U.S. ENVIRONMENTAL PROTECTION AGENCY

Ms. BROWN. Thank you, Mr. Chairman, I appreciate this opportunity to present these remarks to the subcommittee today. I am Karen Brown, EPA, Small Business Ombudsman. The Office of Small Business is located in the Office of the Administrator. My function is to serve as the Agency's advocate for small business across the board on all issues other than contracting and procurement. Essentially, I am concerned with regulatory issues that may affect small business. This brings me to an important function, helping small business comply with environmental regulations once they are implemented.

With EPA's regulatory umbrella now extending over hundreds of thousands of small businesses, many of them Main Street type businesses, voluntary compliance is a necessity. An aggressive outreach program is needed to advise and inform small business of regulations and requirements and how to comply.

EPA has conducted at least three studies that confirm that small businesses, some more than others, have financing needs in order to comply with environmental regulations. An initial study was conducted in 1983 by ICF Inc., "An Estimate of Small Business Financing Needs to Comply with EPA Regulations," did exactly that. This early study made a first-cut estimate that at least $240 million in capital requirements, possibly much more, would be needed for small business compliance with EPA's effluent guidelines and New Source Performance Standards, the Resource Conservation and Recovery Act [RCRA] regulations and other regulations under development at the time. Please note that this predates more stringent RCRA requirements and full implementation of CERCLA which could significantly increase this figure.

The second study in 1986 conducted by the Lee Wan and Associates, Inc., again for the Small Business Ombudsman and titled "Evaluating the Need for an SBA Pollution Control Financing Program," also agreed that the program is needed and that current programs of the Small Business Administration should be strengthened, expanded, and better advertised for potential users.

The third study referred to within EPA as the "Sector Studies," examined the problems of small communities, small businesses and

agriculture in complying with multiple environmental regulations. In brief, the study found that eight out of nine industries studied could experience financial difficulties in meeting EPA's regulations. These eight industries are electroplating, wood preserving, pesticide formulating and packaging, farm supply stores, interstate trucking, gasoline service stations, drycleaners, and small water supply companies.

Probably of equal importance is the need for the SBA to increase its awareness of its ongoing bread and butter program known as the 7(a) Business Loan Program, which can provide direct loans and loan guarantees that may be used for pollution control financing. We have found the 7(a) program to be more compatible with the needs of the small business in need of capital environment compliance. For the most part these would be gasoline service station owners in need of capital to replace tanks and piping, and for small drycleaners who need to install new cleaning equipment that minimizes the evaporation of perchloroethylene or converts the drycleaning process to alternative petroleum-based solvents. It is likely that small pesticide formulators and wood preservers would also avail themselves of the source of capital to come into compliance. Although we are aware of a number of small businesses faced with remediation of hazardous waste problems—actual removal or treatment of hazardous toxic materials—these are not frequent occurrences at this point in time.

In summation, our office deals with many of these—many thousands of small businesses who are experiencing a wide variety of compliance problems. I can assure you, however, that the will and desire of the small business to comply with environmental regulations is almost universal. The environmental ethic is built into the small business communities' way of life and in most cases all they need is some advice on how to comply. Sometimes they do need some extra assistance such as information provided by our telephone hotline, and quarterly update publications, and perhaps a 7(a) loan program from the SBA to enable them to stay in business and comply with EPA's regulations.

This concludes my testimony, Mr. Chairman. I've made copies of the studies referred to in my testimony available to your staff. Again, I thank you for the opportunity to state my views here today, and I will attempt to answer any questions you might have.

[Ms. Brown's statement may be found in the appendix.]

Mr. ENGEL. Thank you, very much, Mr. Sullivan.

Mr. SULLIVAN. Thank you, Mr. Chairman, Congressman Engel, I will read selected excerpts from my testimony and then try to answer some of the specific questions that were sent to me.

Mr. ENGEL. Thank you.

TESTIMONY OF EDWARD O. SULLIVAN, DEPUTY COMMISSIONER, OFFICE OF ENVIRONMENTAL REMEDIATION, N.Y. STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Mr. SULLIVAN. I am Edward Sullivan, Deputy Commissioner of the N.Y. State Department of Environmental Conservation, Office of Environmental Remediation. I note that before assuming my current role I worked for a large financial institution as a lender

and investment banker developing cash-flow cash secured projects for both large and small businesses.

I am currently responsible for New York State's inactive hazardous waste site cleanup program. The program is aimed at investigating and cleaning up approximately 1,000 sites that have been listed on New York State's registry because they are known or suspected to pose a risk to public health and the environment. We have a multistage process that involves investigation, development of plans for remediation, and ultimate implementation of the remedial program comparable to the Federal Superfund Program, and it is based on the concept—and the statutory requirement is such—that we pursue the responsible parties who contributed to or own the site, and that does include lenders in the chain of liability in certain circumstances.

Our program has been tremendously successful in gaining the cooperation of responsible parties because of the structure of both Federal and State law that do assign liability to both current and former owners, and operators and anyone who generated waste at a particular site.

Whether a responsible party becomes involved in the cleanup early on or sits on the side lines is a factor in its liability. In cases where a responsible party refuses to cooperate with us, the State has a $1.2 million bond authorization which we can tap to go ahead and cleanup the site ourselves, but then we will pursue the responsible parties to try to recover the costs of our cleanup action.

In that cost recovery effort, the size and financial liability of the parties may be a factor in our determination as to whether to pursue reimbursement, and in some cases we also consider that as a factor deciding whether to initially involve a business in the cleanup effort.

But as I mentioned earlier, we are required by law to locate and compel the responsible parties to involve themselves in the cleanup, and whether or not we choose to do so in a particular time period their liability does remain.

While in some cases there is a temptation to just go after what we call the deep pockets in a case, we do frequently feel that as a matter of equity we should at least attempt to recover funds from all parties who contributed waste. But in any case, our goal is to achieve the cleanup of the site; to recover the taxpayers' dollars, as required by law; and not to push small business or any business into bankruptcy—though this theoretically can occur in certain circumstances.

I am not aware of situations in which our program has been the sole or primary cause for bankruptcy, though that is not something we keep records on in the department.

All types of businesses are involved in our program: As responsible parties and active participants in cleanup. Large chemical manufacturers, or users of chemicals are the most typical. I think you have heard today about the variety of types of businesses that can be involved, including real estate developers, financial institutions, and other small manufacturers.

There are a number of factors that I would like to bring to your attention that I think the financial community should be, perhaps, more aware of. First, and that is that every site is different; and

lenders should look at every single situation in detail to ensure that they fully understand the specifics. Second, our program is based on the concept that site should be restored to useful activity; so we try to implement useful cleanups. So there may still be value after the cleanup, and that will represent some positive collateral value in a situation. Some sites have very limited contamination and fairly low cost cleanup or removal actions can remedy the situation, and in many cases, while the small business may be involved, there may be a larger party who shares liability in a situation who is willing to undertake and pay for much of the cost.

So careful scrutiny of the site is important and all may not be lost just because there is some level of contamination at a site.

I would say in conclusion that despite the risks and uncertainties associated with many sites there are situations where cleanup costs could cause a company severe financial strains. We would support any legislation that would provide financial assistance guarantees or revolving loans to small businesses involved in such sites to keep them viable to perform the cleanup, to assist in monitoring sites after the cleanup, and to benefit from any activity that does take place. With that I conclude my formal comments.

I do have responses to some of the specific questions, if there are any of particular interest to you.

[Mr. Sullivan's statement may be found in the appendix.]

Mr. ENGEL. Thank you very much.

I wanted to ask you with regard to the Pelham Bay landfill and the problem we have in this area, can you tell us what you have done and what you have been working on in that regard?

Mr. SULLIVAN. Yes; the Pelham Bay landfill is one of five sites for which New York City is the identified responsible party. New York City officials have indicated their willingness to undertake remedial activities at virtually all five landfills. Our primary role is to attempt to compel the city of New York to advance in remedial activities associated with the Pelham Bay site and we are in very active negotiations with the city to enter into a consent order under which it would perform the cleanup.

We have funds available under the Environmental Quality Bond Act that would pay 75 percent of the cost of that cleanup, so we are ready and willing to cooperate with the city in any activity and hope that they will proceed with that. We have had engineers inspect the site on a regular basis. We directed the city, to secure the site, to prevent the flow of contaminants from the site through implementation of interim remedial measures, and we are cooperating with the Department of Health in doing sampling that has been part of a health-risk assessment that the State Department of Health conducted. We continue that activity and stand ready to to work with the city, both to get consent orders signed and to ensure that the work is done according to standards.

Mr. ENGEL. As a former assemblyman for 12 years, I can tell you part of the frustration not only in the Pelham Bay dump, but the problem we had this past summer with medical waste being washed up in Long Island Sound, was the seeming inability of the State and city to coordinate their efforts.

Have you taken measures to try to improve that, if so what? What are the measures?

Mr. SULLIVAN. We have had extensive meetings and efforts to coordinate with the city, Commissioner Jorling has met with both Commissioners Shultz and Sexton to try to encourage the city to move more expeditiously on all fronts of environmental problems in the city. I don't think the problem is one of coordination here. We have staff available who are working with municipalities all over the State in moving on Environmental Quality Bond Act programs. I think that one of the major factors is a shortage of staff at the city in the key areas where cleanup activities are focused. We have, as I mentioned, the funds available, we have the technical staff who would like to cooperate with them, but the city staff seems overwhelmed by the environmental problems that they face, and I would certainly be supportive of any additional staff that could be made available.

Another thing that I think has been problematic for the city is a fairly protracted contracting process. We had a similar problem at the State until a year ago when we got State legislation allowing us to hire standby contractors. We can have consultants and contractors dispatched to a site on a very quick basis under this program, which will be fully operational within a month or two. This is something the city might look at to advance their activities, to more expeditiously bring in outside consultants to supplement their staffing.

Mr. ENGEL. Finally, what would you like to see the Federal Government do with regard to cleaning up toxic wastes? What would you like to see the Federal Government do, particularly with regard to something such as the Pelham Bay landfill or other types of situations.

Mr. SULLIVAN. We are cooperating with the Federal Government on many fronts in the toxic waste cleanup effort. The Federal Government has been extremely effective and responsive in their removal program. That's a program where if drums are found or if there is a spill of very large magnitude, the Federal Government moves in quickly and addresses the problem and I give them extremely high marks in their work there. There has been a threat that funds available for that program could be cut back. I think that would be a very bad thing for New York and for this area particularly, because addressing the problem quickly can prevent it from becoming a much more extensive and expensive situation.

In terms of the landfill situation, the Federal Government has indicated that they are either not going to provide Federal funding for landfill remediation or if they do provide funding they are going to go after the municipality and ultimately the State to recover their funds. We feel this should be a cooperative effort and that the Federal Government should be less reluctant to address large landfills. It is those that are going to be the most expensive sites to cleanup and where the Federal role is important, and the fact that they are going to go back after the municipality or the State to recover their funds I think is unfortunate. Finally, and particularly germane to your questions today, I do consider the threat that large expensive cleanups pose to small businesses to be a potentially significant one, and one where the kind of loan guarantee or revolving loan fund would be a helpful role for the Federal Government to play. I think the Small Business Administration

is the type of organization that should adminster, and regulatory agencies should be responsible, as they are, for ensuring cleanup on as timely a basis as possible.

Mr. ENGEL. Thank you, Mr. Chairman.

Chairman TORRES. You are the chairman now.

Thank you, Mr. Engel for those questions to Mr. Sullivan. I found some of the comments refreshing. I have a similar problem in my district in California, the remains of a large landfill that received much of its waste products from the city of Los Angeles and subsequently to that, on a large scale hazardous waste from the industrial industry in and around; so it has led, of course, to serious water contamination problems, the likes of which will be heard in a hearing being conducted next week in Los Angeles. Fifty water wells in my district are now closed due to contamination of water wells, much of which people depended on for their drinking water.

What is happening here is interesting to me because obviously there is a pattern we have to deal with and our subcommittee, Mr. Engel who serves on two of them is very much committed to see that the Federal Government deals with very critical questions across the whole country.

I would like to raise a question to Ms. Brown.

You talked about the three studies that were conducted under the aegis of EPA, number two is the one you sort of signaled out or targeted on, pollution control financing guarantee program that was established under P.L. 94-305 in 1976. According to you, the EPA, the study you referred to in your testimony, the program fell in relative disuse in the early 1980's. I have checked some of the references in that study and I find the authors of the study surveyed main lenders and small businesses. They heard that a would-be borrower had to face a barrage of paper work, that fees to borrowers are horrendously or outlandishly high, that the program is like an orphan and it is extremely difficult to get information about it. Moreover, they said it really appears as if the program were designed for the benefit of someone other than borrower. It went on and on.

It seems to me it is kind of a bureaucratic Frankenstein monster. So, Ms. Brown, you deal with small business every day, I would like to learn your sense of how well the SBA loan programs have worked in relative relationship to the kind of study we are citing here. What is your opinion? How well have these programs worked?

Ms. BROWN. They—SBA's programs—worked real well in the beginning, in the late 70's and early 80's; then, they did away with tax-exempt bonds, and then the program wasn't advertised, just like you said. The extensive paper work, and the fees, and this led to small businesses not being able to use the program. The district offices at SBA weren't advertising the program and it was hard to find out anything about the program.

Chairman TORRES. You are saying they were underpublicizing the program?

Ms. BROWN. Exactly.

Chairman TORRES. Too much red tape?

Ms. BROWN. Exactly, and the criteria I guess.

Chairman TORRES. You agree then to the studies, what they cited, which is too many bureaucratic obstacles?

Ms. BROWN. Exactly.

Chairman TORRES. Mr. Haggerty, would you have some defense on that?

Mr. HAGGERTY. The pollution control bond program action was handled as a national program requiring a bond issue and extensive legal opinions and documentation. The new program will be a guaranteed loan program and will be handled by these individual district offices throughout the United States. Both the SBA district offices and the banks will be more familiar with the program and will be able to use it as they see an appropriate case. It will also be easier to use, similar to the regular SBA loan program, except with a $1 million limit.

Chairman TORRES. Thank you, sir.

Mr. Engel, that completes my questioning. In the interest of time I give the balance of my time to you.

Mr. ENGEL. Thank you, Congressman. I have one very quick question to follow up on the line of questions that you had asked, the notice of proposed rule making from SBA states. I want to just read it. It says:

> This rule will not have significant impact on a substantial number of small entities, this is because in recent years when hirer guaranteed financing has been available, fewer pollution control applications have been submitted to SBA. SBA anticipates even fewer applications under the lower financing maximum proposed here.

Isn't that a pretty outrageous attitude to have about a program, that it is even more useless than the program it replaced?

Mr. HAGGERTY. As you know, all loans are only money. The problem here will be the banks will get a loan application. If for some reason the application is turned down for fear of pollution liability, we will never be able to see the loan because of the guarantee program which has been threatening to the banks. I think what is meant by that statement, sir, is the fact that the lenders have great fear of this pollution matter which has really surfaced in the last 4 years. About 10 or 15 years ago you never heard of it.

Mr. ENGEL. I think we mentioned red tape as a fact before the small borrowers, and the fee structure. It is very, very upsetting to hear that. I would like to say I will make a deal with you, I am making a commitment to work on the legislative problems dealing with this, if you make a commitment to make it work on the ground. This is very upsetting to hear that the program really isn't doing what we would all like it to do.

Mr. HAGGERTY. The new program was printed in the Federal Register in April as proposed regulations. How the program will operate will be determined by the final regulations when they are issued. However, from the proposal it appears that the program will be much simpler to operate as a loan program and the fees will be substantially reduced.

Mr. ENGEL. Thank you very much. I would like to thank the panelists. I appreciate you coming here this afternoon.

Thank you very much.

The fourth panel involves something that is very, very important also. We have heard three panels today on the problems of toxic waste and small business, and now we are going to hear the next

panel which will deal solely with the topic of the Pelham Bay landfill and the way it affects the surrounding community.

There are a number of community residents who have come here and want to testify about the impact the dump is having upon this area, and they are certainly welcome people who have been very patient in waiting to testify and know that their testimony will help us develop options to deal with the landfill. I might also say that I was continually delighted to be appointed a member of the subcommittee on this Small Business Committee. I was very happy to be appointed. It was because of the Pelham Bay landfill and the problems we have been having with it and also, I know your personal commitment to try to use our subcommittee to help get the ball moving in terms of cleaning up toxic waste, waste which affects small businesses and the community at large, because we cannot obviously limit it as what affects small business and the community ultimately affects all of us. So I am very delighted to have the people come here and testify.

I would like to invite James Sodca; Marcia Hampta; Edward McFarlane; Louise Metsver; Pat Nolan; Dave Hoffin; Charles Crimer.

TESTIMONY OF JAMES SODCA

Mr. SODCA. Thank you, Congressman, and thank you Congressman Torres and members of the panel for coming here today. I first want to welcome you to the Officer Edward Byrne School. The school was just named 3 weeks ago in honor of Police Officer Edward Byrne who gave his life fighting narcotics addiction. It is proper for a hearing such as this that deals with quality of life.

I wanted to speak on the Pelham Bay Landfill and the effect that the presence of toxics there and the effect that it has had on our neighborhood and also the perception and the fear that that issue has driven home to many of our residents.

Last year was the worst year ever for the beaches of our community. This community is a waterfront community. Country Club, City Island, Edgewater Park, Silver Beach, Locus Point, and of course those are waterfront communities and we have a large public beach, Orchard Beach in our confines. All the waterfront there are private beach clubs and those beach clubs last year took a beating unmercifully because, number one, Pelham Bay Landfill, the fears associated with it, the people's concerns about what would be in the water, what was actually in the landfill, we never received definitive answers, so, there was a doubt. Then last year we had medical waste throughout our shores, not only in this neighborhood but the whole Northeast, and really there was not the type of Federal intervention that we would have liked to have seen when that issue arose.

All in all, our communities' beaches last year—one of them is constructing a pool because of the fear that this may again happen, that the fear in the people's minds last year may still be there this year. The issue had not been in the forefront as much but there is still significant hesitation. Our waterfront beach owners have been hurt and they need your assistance.

Pelham Bay Landfill was mentioned, there is a problem there. The city of New York is moving at a snail's pace in preparing the appropriate paper work and taking the appropriate action to get the landfill capped, to have any toxics remediated. I ask for Federal and State intervention because I do not feel that the city of New York can keep the promises it makes to the people. I don't think they have the capacity and I don't think they have the competence. So we ask for your intervention.

Relative to loans, I have dimensions that the Small Business Administration has a total absence of presence in this community and anywhere else. When our local business people apply for an SBA loan, I can't remember one in the almost 10 years I'm district manager that has ever received an SBA loan. They are told we are in a depressed area, they do not qualify. SBA does not exist in this neighborhood. We have many people that could use SBA loans to enhance their businesses. How do we underwrite SBA loans? How do we make them more available?

I have a suggestion. As I was listening to the testimony, the city of New York receives Federal funding for a home improvement program. Under this program owners of one or two-family homes can get up to $15,000 in money for home repair at very reduced interest rates, either 3 or 6 percent. These loans are federally financed, funneled through the city of New York. The same thing we do with home improvement loans, why can't with do with the Small Business Administration? This is a mortgage program, federally underwritten, why can't we do the same thing with low interest business loans? The same principles can apply. In fact, in the case of home improvement loans, we worked with the banks and we got the banks to agree to loan money to certain homeowners. We have two communities in our district, Edgewater Park and Silver Beach, where the people do not own the land, they own the home and no bank wanted to give a loan to that type of community. We identified a bank that would do it, Chemical in this case; they are doing it and we are now processing federally guaranteed home improvement loans. So I would recommend the same thing insomuch as the Small Business Administration is concerned, because we do have people who have been adversely affected by the quality of air and quality of water. Beach clubs come to mind immediately. We would like your assistance as well in having increased testing of our waters and an increased amount of testing of our waters. We are not satisfied with the New York City Department of Health results. People do not place credibility on those results. We need an outside source, conservative. If the Federal Government can consider the uniqueness of this community and do something about that, we would want regular water testing and regular air testing.

The air quality on a humid day, because of the Pelham Bay Garbage Dump, is not acceptable. Co-op City, for example, Spencer Estates in Pelham Bay, as well, get material odors that I feel are underground combustion at the landfill. The methane was supposed to be toured, it never has been because they feel there may be toxics when you go down and dig for the methane. We are in a catch 22 and the timetable we have been given to cleanup the landfill is not acceptable.

Many people are concerned that birth defects or problems other handicapped people have had later on in life may be related to quality of air in this community. So I would ask for Federal intervention on that.

I thank you for coming to this community, Congressman Engel. Congressman Torres, it has been a pleasure and we will cooperate in any effort that you may have. Thank you.

Mr. ENGEL. Thank you very much.

Ms. Parlica?

TESTIMONY OF MARCIA PARLICA

Ms. PARLICA. Thank you. My name is Marcia Parlica and I am president of the Country Club Civic Association here in the Bronx. The Pelham Bay Landfill continues to have a great impact on the communities which surround it. Once we were merely overwhelmed by the odors that emanated from our mounting garbage, now we are overwhelmed by a feeling of hopelessness and of helplessness because we are told that despite the availability of Superfunds from New York City for cleanup, we must wait our turn. Playing this waiting game leaves our residents feeling second class, and as civic leaders it has become our dubious honor, in an effort to act responsively, to calm the growing fears of local residents on many environmental points. The past was a grandiose example of sweeping under the carpet and not dealing with the landfill's environmental problems. Today some of us hope that the grievous apparent disregard by the New York City Sanitation Department for the health and welfare of those residents who reside in the proximity of the landfill has not come to an end. We hope that local, State and more important that Federal levels will soon—that we will soon see a concerted effort on the part of all to render the landfill environmentally safe.

Our community is one of one and two-family homes. We want it to be a community which will be able to attract new families which can, in turn, keep our community, our schools and our commercial area volatile and growing. The environmental effects of the landfill on the current residents have not been clearly determined and this is where we need the assistance of the Federal Government.

New York City Health Department conducted surveys of leukemia statistics, but no testing and no surveys were done on the cancer statistics. New York Cities' finest have done nothing more than they usually do, therefore, they have not been reassuring nor have they been accepted by the community. We need in-depth testing from the Center of Disease Control in Atlanta. Truly, if no environmental threat exists, then let the fears of the local residence finally be put to rest. We ask for your help in obtaining an in-depth health study and enforcing the Clean Water Act and allowing it to protect our local coastal waters, speeding up of the cleanup operation of the Pelham Bay Landfill and an end to the leaching, which currently has been allowed to flow into waters and possibly our underground streams. Thank you for your time and I appreciate your taking an interest in the Pelham Bay Landfill.

I hope you will accept this very simple outline of what some of the concerns of the community residents are. Thank you.

Mr. ENGEL. Thank you.
Ed McPartland?

TESTIMONY OF ED McPARTLAND

Mr. MCPARTLAND. Good afternoon, thank you for coming. My name is Ed McPartland. I'm president of Civic. We have the same concerns as Spencer and its Country Club and Community Board Ten, all the same, only Spencer is right, this dump is right in our backyard. The lady on my right can look out her window any time of the day or night and there it is.

We are concerned about underground streams. We know there was somebody convicted of dumping toxic waste. Why does it take so long for somebody to investigate it? When it was opened the stench was terrible and nobody ever did anything to it. We would like the Government to move in, seal the bottom of it, cap it, but do not leave it alone. Don't just cap it, test it, because maybe in 2 minutes or 30 years we can get something to neutralize the stuff that's in there. We cap it and we may be closing another bottom in 10 years, 5 years or 20 years. All the concerns are the same: The air, the water, the fish.

The Health Department has made a survey, they said everything is within means. That's only on the top. They take water from the top of the dump, which is covered by 15 foot of dirt, which probably you can get the same results in your backyard, because it is not coming up, it hasn't gone through to the water yet and it may some day. The Health Department does not go far enough. There has been a leukemia test and like Ms. Hampta said, they didn't go for cancer. This dump is an attraction. People come from Manhattan, people come from lower Bronx, to go to Orchard Beach, to go play up on the woods and on the dumps before it was sealed. So I believe that they are testing—Health Department cannot be even scratching the surface of making what's going on elsewhere. That's all I have, and I thank you.

Mr. ENGEL. Thank you, very, very, much, Ed.

TESTIMONY OF LOUISE METSVER

Ms. METSVER. Thank you, gentlemen, for having this meeting here and so close to us that we can attend.

I would like to read just something while I am concentrate on the Pelham Bay Landfill, we are also quite concerned about the small businesses that have been affected. Some of the gentlemen who wanted to speak had to leave. My name is Lee Spencer, 30 years I am a member of Spencer Estate Civic Association, which organization has been in existence more than 35 years. I am very active in the area and this is due to the increased concerns of the residents in our Pelham Bay Park area about the pollution of our local waters, Eastchester Bay, and Long Island Sound. In addition to our international interests, our problem has been Pelham Bay Landfill site. Questions have come up the last few years about the possibility of toxic materials leaking in onto our area and has caused so much fear the public has reacted very strongly. These fears have now affected the small recreational businesses in our area, the beach clubs, the fishing clubs, boating, marinas, in other

words, and the domino effect has reached into the restaurants, the concessions, and other small businesses within the waterfront areas. I don't think any of these clubs or what have you in the past have looked for assistance of the SBA, but from my past experience when I was working it is awfully difficult to get a loan and perhaps it was brought to their attention and given some cooperation and maybe they could do something about it because a lot of them have to consider using swimming pools and have them ready and that is a very good capital expense. They will use and make use of their membership if it is going to be increased.

Another thing that has been mentioned by Mr. Sullivan, our whole area is referred to as the Throgs Neck Penninsula. It is all waterfront property. We are on the mainland but everybody around here lives and makes use of the waterfront. There is some undeveloped property there and it's being used as a storage site for a sewer job going on; in the meantime the fill that has been coming in here, and hadn't that particular site not been going out, it has been used, it has been stirred around and it has gone into wetlands there. Why I mention BEP, EPA, whatever organization it is called, has been very, very insufficient inspectors coming up. When they do come up, they get reassigned or there are three of them for the whole area all the way up for the tip of Long Island, and it is awfully sad to see a small area be abused the way it is. It makes you wonder who do we call for help? We don't expect to have an inspector assigned permanently, but we feel we are getting nowhere and this has been going on over 3 years. We are just looking for a way to go.

Thank you both for being here.

Mr. ENGEL. Thank you very much.

Pat Nolan?

TESTIMONY OF PAT NOLAN

Ms. NOLAN. My name is Pat Nolan. I'm a resident of the Spencer City area. I'm there for 10 years. Mr. Chairman and the subcommittee, I feel as far as the issue on Pelham Bay Landfill and this hearing, it has traveled to what I see as a farce. Where were you, Mr. Engel, when we asked a year ago for city, State and Federal help from elected officials? When in reality we received no help, and you say you cannot rest until this landfill is cleaned and pollution free, well, how did you sleep this past year since the landfill has been reclassified as a class 2 hazardous waste zone posing a threat to the people?

Three months ago I buried my daughter. It was her who spoke to the reality of it over a year ago, the health concerns and concerns of the environment. I alone stand with parents who are concerned with the health of their children. My daughter while in school wrote a report entitled "The Environment of My Neighborhood," and she said in that report if we ruined the environment nobody will have a place to live. I want the chairman to know, and you, Mr. Engel, it was you who downplayed and ignored my health concerns about this landfill just 1 year ago.

I want to conclude and thank the Chair and persons who know about the landfill, thank you for caring and being part of this, but

you, Mr. Engel, are a little too late since we have already organized and are on our way to making progress on our own. Mr. Engel get a good night's sleep because I haven't got one in a long time.

Mr. ENGEL. Thank you. We have two more people here from the community who want to testify and I want to have them here, Charles Crimi and Dave Hochhauser.

Mr. Crimer, could you please, sir.

TESTIMONY OF DAVID HOCHHAUSER

Mr. HOCHHAUSER. Thank you, Mr. Chairman. My name is David Hochhauser. Thank you for the opportunity to address you today. I am a long-time member of the community and I am encouraged by the interest this committee has taken in the problem confronting this area. We have worked long and hard to build a strong and safe community. We have many community groups that work long and hard many hours to build a strong and safe Throgs Neck community. I am happy and proud to be a member of the Throgs Neck Volunteer Ambulance Corps, one of those community groups. The Ambulance Corps has been around for 10 long years, and we will be around for another 10 long years working in the Throgs Neck community.

We realize that the Pelham Bay landfill threatens our way of life in several ways: This hearing has concentrated on the adverse effects such a waste site has on businesses. I can confirm that that threat is very real. There are also unanswered questions regarding the effect of the landfill on the health of our children, as well as the effects on our property values and the environment in which we live. The environmental problems that hit our beaches and waterways last summer had a very serious impact on the beach clubs and waterfront business that has to rely on a clean environment. The leaders of this community do not wish to see a further deterioration of the public's confidence in our waterfront areas. Removing the menace present in the Pelham Bay Landfill would play a large role in assuring we don't have a repeat of last summer because we live so close to the landfill, residents of this community see what others might not see. Water running off a landfill into the bay and we know it is carrying something from the landfill into our waterways and perhaps our drinking water. We see roads around our landfill falling apart. There are also residents of this community who are afraid that things we don't see such as the gases emitted from the landfill are very unhealthy.

We also see things that threaten the economic vitality of this area, not to mention our health and homes. Some Government officials have been slow in addressing these concerns. That is why we welcome the input the Federal officials, particularly Congressman Engel. It will take long, hard work on all our parts to safeguard our neighborhoods, and we look forward to working with you.

I urge you, Congressman, please give us Federal water testing. This is very, very important. This has been touched on before. It is most important that our beach clubs and our areas and our children have a safe place to boat and swim this summer. We must know by Memorial Day what our waterways are.

The Department of Health, city of New York has been taking some testing, but they have been inconclusive and very unsure and very many times when we asked them questions about the landfill and questions about the waterways they say, "Oh, it will be OK, don't worry about it." We are not going to take those answers lying down and we thank you, Mr. Torres and Mr. Engel, for coming and opening up the hearing and we urge the Federal Government to be involved now.

We look forward to working with you in the future, to help you get the answers we need to our questions. Thank you very much for your time, gentlemen.

Mr. ENGEL. Thank you.

Mr. Crimi?

TESTIMONY OF CHARLES CRIMI

Mr. CRIMI. I waited 10 years for this occasion and I welcome you from California and, Congressman Engel, we are going to get together and solve this problem without any rhetoric, and I'm going to give you an engineering aspect of the situation.

They don't realize what is existing here. Here I have in front of me 10 years ago—I'm 82 years ago with a pacemaker, for me to come over here today, I come over for love of my community. See Jimmy Vacca, he is a wonderful guy in my community and here I am right here; 10 years ago I wish you would take a look at this, you will get an engineering aspect of the whole situation. Now I am giving drawings that I made in 1981, I gave you a copy right, in the office, I was in the office last week, and I have been working on this quite a while. Now, here we are, here's the landfill. Look at this, I made an engineering study and—I love guys from Washington and believe me God bless you all—now, here we have it, there are letters in the back here. This is the landfill and the road, all right, adjacent to that. Now, let's get to this. Do you see where the openings are here? That's the bay. At high tide the bay backs up and this is drainage. It comes down from the landfill into the catch basin. At the lowest level, at the lowest level you can see, here I am 10 years ago, I brought this out. Nobody cared. You know so much rhetoric going around that you know the stupidity of it is driving me crazy. Here's the engineering aspect. The bay backs up into catch basin at high tide. See the opening here? it covers it up to here. High tide, under the primary road, which is the lowest point—they named the road after me; what the hell good is the road named after me, do you know what I mean, I would like to have this darn thing fixed for my community.

Right there we have, you know, when you breathe, if your tie is too tight, that's what happens right down there. Here's my demonstration. Do you know what this is? An explosion on the primary road. Right here. This is one cable that is taken off a transformer right alongside the primary road.

Now, I was there 10 years ago with Velendez, he was the chief engineer of the 5 manholes that are in the ground. Manholes full of toxic water, people don't realize. The landfill underneath and the run off on coming down, you have drawings here, look at this, see it here? All right. Now you see the way it is coming in. I show

you a drawing here, elevated this. I worked with them with Lugo. I know Jim Vacca was there, all these people and you have the drawings.

Now, ever since the last situation and all the political domino things have been going down, they stopped. Shaw Associates has to rebid again to get moneys. Now they were supposed to do that and they elevated it up the surface lines right here, 3 to 4 feet above, you have got Con Edison, you have water resource, sewers, everything, that's the engineering aspect.

Mr. ENGEL. Mr. Crimer, could you tell us the health threat that this poses?

Mr. CRIMI. This is the health threat, I brought that out. I had chopping down 6 feet, down below on that road 9 years ago, he had a man down there pounding in the lead from the water supply that we drink, and nobody could tell me that that water is not being contaminated. It's going to our communities and here's where we have meetings with the parks committee, and I am very, very active in the community. I take no for an answer, the result is this: That I'm just trying to follow my orientation.

Here we are, the electric equipment, I was at a meeting about a year ago and they stated that the transformers, six of them, weren't working right because the people at City Island weren't getting the right voltage. Con Edison they have. I said to them, "Where are those transformers, you get that road elevated." I was out there 2 months ago, Con Edison was out there with five trucks rewiring the whole place. So that this way in another 5 years we will have another explosion. So I beg of you, Congressman, and I want to thank you for coming from California, you two are Guardian Angles, believe it or not, and thank God my pace maker goes good and I want to thank you very much. Elliot, I am going to work for you and we will get this job done.

Mr. ENGEL. Thank you, Mr. Crimer. I said to you the other day and I will say it now, it isn't often that people have roads named after them when they are still on this Earth, I think it is a tribute to you.

Mr. CRIMI. Yeah, but what the hell good is it?

Mr. ENGEL. We are very appreciative to work with you.

Before we conclude I would like to say a number of things and I would like to ask Congressman Torres if he had some comments.

First of all, this is the first time to my knowledge that a Federal subcommittee has looked at the issue of the Pelham Bay Dump and the first time, I believe, that two Federal subcommittees have come to the 19th district to actually look at the issues surrounding the dump. So I really consider it very positive that we are here.

I want to thank Chairman Torres, who as mentioned came all the way from California to be here, and Chairman Wyden who came all the way from Oregon to be here, and I think it is significant that the two chairmen would come such far distances to look at these problems, and perhaps we can now begin.

I think it shows the neighborhood clout that people who came and testified have, and we will continue to do this, as Mr. Torres said, having the same problems in identical issues, in fact, all over the country. This is really a problem of national scope. I think that one of the things that was mentioned before and something Ms.

Benson raised is that the impact on small businesses is in fact the Small Business Committee and subcommittees of the Small Business Committee, including environment. It affects the small businesses in our area. It affects the fishing industry. It certainly affects the beach clubs, and many of them have told me personally they have had a drop in memberships and people wanting to belong to them since we have had the problem with the dump and with medical waste washing up. It certainly effects the restaurants in the area, and I am told on a number of occasions people have backed out of buying some houses in various areas around the dump because they are afraid of the repercussions of moving into these houses so close to the dump and, therefore, it certainly affects in terms of small business and selling houses and buying houses, so I think we have natural tie ins to the small business communities and also to the Environmental Subcommittee of the Small Business Committee, and I appreciate all the neighborhood people for coming in.

I would like to, for a minute, address some of the comments that Ms. Nolan made because I think our hearts go out to her. I don't mean to in any way denigrate anything she has said. I think all the elected officials, I believe that all the elected offices in the area, particularly the elected officials who represent us on the State and city level have gone on record, including myself, of supporting the efforts to try to get the dump tested and to try to get it cleaned up. I know that Senator Veler and I, when we were in Albany, wrote numerous letters to try to show our support, both the efforts of the State government and the city government to do it. I think that by working together on a Federal level, this is the first time, to my knowledge, that we really brought in the Federal Government. I think that we can achieve what want to achieve. I think only by working together we can do it and while some of the things that have happened obviously are very painful, I think finger-pointing really does not help the situation, but we need to all work together.

I might mention the Bronx Task Force which was formed and I appreciate the fact it was formed and I appreciated the fact Ms. Nolan, that I was not asked to participate in it in any way, and I think that all elected officials need to work together in order for it to be done. So I think there has been a little bit of political posturing on the part of a number of people, but I don't want to mention any names. I don't think political posturing by elected officials is proper and I think by all of us putting our heads together can solve the problem. I have been a Congressman from my area only since January and I consider it a success that in 5 months we were able to bring two distinguished chairman that can deal with this problem, and I say to everybody, including some of the elected officials that have done a lot posturing, I will work with every elected official, every community leader to do my part to see we get the Pelham Bay Dump fixed up once and for all, and let's not point fingers.

Chairman TORRES. I want to thank all of our panelists for attending this hearing and sharing their concerns, and I mean everyone across the board. We must insist on a solution for the problems of capital for the environmental remediation for small businesses.

You have to understand small businesses are the driving force in the creation of jobs, innovation, market forces, that is a must.

Let me assure you, ladies and gentlemen, that Mr. Engel and myself, members of this subcommittee are working together to find solutions for the problems outlined to this. Mr. Engel could have chosen many easier and perhaps exalted committees to be on. He also serves in the U.S. Congress on the Appropriations Committee, and Rules Committee. He chose to put himself on the Small Business Committee because he knew within that committee he could effect the problems here. So he not only sits on the Small Business Committee, he sits on two of the important and key subcommittees. Mr. Ron Wyden's Subcommittee on Regulation, Business Opportunities and Energy and my own subcommittee, Environment and Labor. He has done this because he feels he can have the greatest impact here.

As always, ladies and gentlemen, the participation of the public, you, the people sitting in this room at this hearing, offered us the best hope to strike the necessary balance between the need to foster small business and the desire of environmental integrity. Indeed you have done that.

Mr. Crimer is an example of a citizen who comes here and shows us exactly what the problem is, and that's important to me. It is always a privilege to me to come to this city of New York and now to this borough for the first time and to conduct this hearing in a junior high school, because after all, ladies and gentlemen, it is the young children here who will pay the ultimate price if we stop generating jobs and we allow our air, water, and land to deteriorate. We cannot allow this to happen.

Congressman Engel, as Mr. Vacca pointed out, this facility here is named after one individual, Edward R. Byrnes. I think that is a manifestation, really, naming this facility for one man who was brave, one man who would show us we can do things. So it is fitting we meet here today, and, Mr. Engel, I thank you for inviting us here, Mr. Wyden and myself, to work with you and reach a conclusion to these problems, a conclusion that is satisfactory to both our constituents.

Mr. ENGEL. Thank you, Mr. Torres. I look forward next month to coming out to your district where you are experiencing similar problems to what we are experiencing in the northeast Bronx. I thank you very much. I know Mr. Crimer has more testimony.

Mr. CRIMER. I have one more thing to say: This is it. Government agencies who should get together, to solve the Pelham Bay landfill, U.S. Government EPA Permits, New York State EPA, Wetlands Permits, Army Corps of Engineers, Government Wetlands Permits, that is on the statement.

All right, now here I have, you and I are going to work on this, New York City agencies to work together, Department of Highways, DOT, all right? Sanitation Department, containment of the landfill after the primary road is built up with the drainage and everything. All right? Now, over—No. 3, Parks Department; Number 4 Water Resource, water industry sources, raise pipes four feet above road; 5, sewers drainage; 6, Con Edison, new transformers, more voltage to Pelham Bay and their communities, and I

think we will work together if you get a hold of the city agencies and the Government agencies.

Thank you very, very much.

Mr. ENGEL. Thank you, very much, Mr. Crimer.

The hearing is now adjourned.

[Whereupon, the hearing was adjourned.]

APPENDIX

STATEMENT OF WILLIAM SEITZ, MANSFIELD, MA.

NEIGHBORHOOD CLEANERS ASSOCIATION

I AM HERE ON BEHALF OF THE ALMOST 4,000 DRYCLEANERS WHO ARE MEMBERS OF THE NEIGHBORHOOD CLEANERS ASSOCIATION, A NINE STATE GROUP WHICH COVERS THE LARGEST DRYCLEANING MARKET IN THE UNITED STATES AND, PROBABLY, THE WORLD. NCA-LAND INCLUDES, NEW YORK, NEW JERSEY, CONNECTICUT, MASSACHUSETTS, RHODE ISLAND, PENNSYLVANIA, DELAWARE, WEST VIRGINIA AND FLORIDA. WE HAVE OVER 2,000 MEMBERS IN THE STATE OF NEW YORK.

I HAVE BEEN IN THE DRYCLEANING INDUSTRY FOR 45 YEARS, THE LAST 40 YEARS WITH NCA. I SPEAK FOR AN INDUSTRY I KNOW VERY WELL AND FOR THE PEOPLE WHO WORK VERY HARD AT MAKING A LIVING AT IT. ALTHOUGH I DO NOT REPRESENT ALL OF THE DRYCLEANING PLANTS IN THE UNITED STATES, I BELIEVE I REPRESENT THE THINKING AND ATTITUDE OF THE OVER WHELMING MAJORITY OF PEOPLE WHO MAKE UP THE DRYCLEANING INDUSTRY.

LET ME STATE, EMPHATICALLY, THAT THE DRYCLEANING INDUSTRY HAS NEVER TAKEN AND DOES NOT NOW TAKE AN ADVERSARIAL POSITION REGARDING REGULATIONS TO CONTROL THE EMISSIONS OF AIR POLLUTANTS. ON THE CONTRARY, WE HAVE DEMONSTRATED BY OUR ACTIONS OVER THE LAST TEN YEARS OF GOVERNMENT REGULATIONS AND OVER THE LAST FORTY-FIVE AS A MATTER OF ECONOMICS AND SAFETY, THAT CONTROL CONTAINMENT AND RECLAMATION OF PERCHLOROETHYLENE. THE DRYCLEANING SOLVENT USED BY OVER 95% OF OUR MEMBERS AND BY OVER 75% OF THE DRYCLEANERS THROUGHOUT THE UNITED STATES, IS A NECESSARY AND ESSENTIAL REQUISITE.

TO HELP YOU BETTER UNDERSTAND THE "COMMERCIAL" MAKEUP OF THE DRYCLEANING INDUSTRY, I HAVE INCLUDED IN MY STATEMENT A COPY OF THE DEMOGRAPHICS OF NCA'S MEMBERSHIP IN THE NINE STATE AREA WE REPRESENT. DEPENDING ON THE AREA, INDUSTRY PARTICIPATION IN NCA RANGES FROM 70% TO 95% OF "RETAIL ON THE PREMISE" DRYCLEANERS IN THE NINE STATES. DUES ARE BASED ON NUMBER OF EMPLOYEES AND ONLY ONE OWNER IS EXEMPT IN A PARTNERSHIP OR CORPORATION. OVER 28% OF OUR MEMBERSHIP ARE BUSINESSES THAT HAVE ONE EMPLOYEE OR LESS. OVER 38% HAVE TWO TO THREE EMPLOYEES AND OVER 23% HAVE FOUR TO SEVEN EMPLOYEES. AS YOU CAN SEE, OVER 90% OF NCA'S MEMBERSHIP ARE SMALL OPERATORS AVERAGING BETWEEN $75,000. TO $125,000. IN ANNUAL SALES. PLEASE UNDERSTAND THAT NCA'S MEMBERSHIP IS NOT UNIQUE. IT IS TYPICAL OF THE MAKEUP OF THE DRYCLEANING INDUSTRY THROUGHOUT THE COUNTRY.

THE INDUSTRY HAS GROWN IN THE LAST FIVE OR SIX YEARS BUT DRYCLEANING SALES DROPPED IN 1988 AND CONTINUE TO DECLINE IN 1989 BECAUSE OF SOFT ECONOMIC CLIMATE, IMPROVED SYNTHETIC AND MAN MADE FIBERS, E.G.: POLYESTER AND AN OVER SATURATION OF DRYCLEANING FACILITIES. PROFITS ARE BEING SQUEEZED AS A RESULT OF ESCALATING RENT INCREASES, INCREASED DEMANDS FOR HIGHER WAGES AND THE RISING COST OF CHEMICALS AND SUPPLIES. EVEN THE COST OF COMPLIANCE WITH GOVERNMENTAL REGULATIONS, ESPECIALLY AT THE STATE LEVEL, HAS ADDED AN ADDITIONAL 2% TO 3% IN OVERHEAD TO AN ALREADY OVERBURDENED SMALL BUSINESS OPERATOR.

DESPITE THE OBVIOUS FACT THAT WE ARE SMALL IN SIZE, AS AN INDUSTRY WE HAVE BEEN LEADERS IN OUR ATTITUDE AND COMMITMENT TO WORKING WITH GOVERNMENT AT THE FEDERAL, STATE AND LOCAL LEVELS TO IMPROVE THE QUALITY OF LIFE FOR OUR EMPOLYEES AND PUBLIC AT LARGE. WHEN EPA "DISCOVERED" THE DRYCLEANING INDUSTRY, WE OFFERED OUR EXPERTISE AND COOPERATION IN HELPING TO FIND SOLUTIONS FOR PROBLEMS THAT NEEDED TO BE SOLVED. THE CONTROL TECNOLOGY GUIDELINES (CTG) AND NEW SOURCE PERFORMANCE STANDARDS (NSPS) ARE TWO EXCELLENT EXAMPLES OF THE LEADERS IN THE DRYCLEANING INDUSTRY WORKING WITH EPA TOWARDS THESE OBJECTIVES. WE HAVE TAKEN THESE TOOLS AND HAVE CONVINCED AN OVERWHELMING PERCENTAGE OF THE INDUSTRY OF THEIR NEED TO PARTICIPATE. THEIR RESPONSE HAS BEEN NOTHING SHORT OF FANTASTIC.

UNFORTUNATELY, THE CHEMICAL WHICH IS USED FOR DRYCLEANING, PERCHLOROETHYLENE, IS CLASSIFIED AS A HAZARDOUS MATERIAL. 90% OF THE DRYCLEANERS IN THE UNITED STATES USE PERCHLOROETHYLENE BECAUSE THEY HAVE VERY LIMITED CHOICES. IN THE NORTHEAST, THE PERCENTAGE IS PROBABLY HIGHER THAN 95%.

IN THE PAST, PERC WAS NOT REGARDED AS HAZARDOUS AS IT IS TODAY. THERE WERE RULES PERTAINING TO IT'S USE AND DISPOSAL. BECAUSE OF THIS FILTRATION, AND DISTILLATION WASTE PRODUCTS WERE DISPOSED OF IN MANY WAYS THAT WOULD BE CONSIDERED ILLEGAL TODAY. AT THAT TIME IT WAS COMPLETELY LEGAL.

NOW, MANY OF THESE DRYCLEANERS MAY BE FACING CLEANUPS OF THEIR SEPTIC TANKS, CESSPOOLS OR THE PROPERTY UNDER AND AROUND THEIR BUSINESSES. IN MANY CASES THE PERSON WHO CAUSED THE CONTAMINATION HAS SOLD OUT AND IS GONE. THE NEW OWNER WHO MAY NEVER HAVE DONE ANYTHING WRONG IS BEING HELD RESPONSIBLE FOR SOMEBODY ELSE'S ACTIONS.

THE COST OF A CLEANUP CAN BE ENORMOUS. THESE SMALL BUSINESSES CAN SELDOM AFFORD TO PAY THESE COSTS AND YET THEY ARE STILL EXPECTED TO DO SO. CASES ARE ALREADY APPEARING WHERE DRYCLEANERS HAVE BEEN PERSONALLY BANKRUPTED BY CLEANUP COSTS AND GOVERNMENT STILL PURSUES THEM FOR MORE.

ASSISTANCE IS DESPERATELY NEEDED. LONG TERM LOW INTEREST LOANS ARE PROBABLY THE BEST ANSWER. THEY WILL ENABLE A DRYCLEANER TO DO A CLEANUP WHILE STILL STAYING IN BUSINESS AND MAKING MONEY TO PAY BACK THE LOAN. IF THESE TYPES OF LOANS ARE NOT MADE AVAILABLE, IT WILL COST GOVERNMENT MORE BECAUSE GOVERNMENT WILL BE THE ONLY SOURCE LEFT TO PAY FOR THE CLEANUP.

IT IS FOR THESE REASONS THAT WE REJECT THE PROPOSED OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION REGULATIONS FOR DRYCLEANERS USING PERCHLOROETHYLENE REDUCING PER LEVELS FROM 100 PPM TO 25 PPM. THE MISINFORMATION OR MISCONCEPTION OF THE

HAZARDS OF PCE SHOULD NOT BE THE REASON TO UNNECESSARILY BURDEN AN INDUSTRY THAT HAS DEMONSTRATED ITS WILLINGNESS TO COOPERATE. THERE HAS BEEN AND CONTINUES TO BE A SERIOUS DIFFERENCE WITHIN THE SCIENTIFIC COMMUNITY AS TO THE POTENTIAL HAZARD THE PCE OR PERC POSES TO THE WORKERS AND THE PUBLIC. THE NEW OSHA REGULATION WILL BE FURTHER DAMAGING IN TERMS OF A SIGNAL TO OTHER AGENCIES, E.G. STATE ENFORCEMENT AGENCIES, TO DEVELOP MORE STRINGENT STANDARDS THAT WOULD CAUSE A SERIOUS ECONOMIC HARDSHIP AND POSSIBLY THE DEMISE OF SIGNIFICANT NUMBER OF DRYCLEANERS THROUGHOUT THE COUNTRY. AS HAS BEEN STATED, THERE IS NO ALTERNATIVE SOLVENT AVAILABLE TO THE INDUSTRY THAT CAN REPLACE PERCHLOROETHYLENE AND, IN MY OPINION, THERE NEED NOT BE ONE IN TERMS OF WHAT THE DRYCLEANING INDUSTRY HAS DONE TO SIGNIFICANTLY REDUCE THE EXPOSURE AND EMISSIONS OF THE CHEMICAL IN THE WORKPLACE AND THE ATMOSPHERE.

I MENTIONED EARLIER THAT THE DRYCLEANING INDUSTRY HAS ALWAYS RECAPTURED OR RECLAIMED PERCHLOROETHYLENE AND HAS ACCEPTED THE CONCEPT OF "REASONABLE AVAILABLE CONTROL TECHNOLGY" (RACT) AS DEVELOPED FOR THE INDUSTRY BY EPA. I WOULD LIKE TO AMPLIFY THAT STATEMENT BY BEING MORE SPECIFIC IN TERMS OF WHAT THE INDUSTRY HAS DONE HISTORICALLY, PRESENTLY AND SOME OF THE FUTURE DEVELOPMENTS THAT ARE TAKING PLACE.

1. BECAUSE OF THE HIGH COST OF PERCHLOROETHYLNE ($4.25 TO $4.50 PER GALLON) IT WOULD BE IMPOSSIBLE TO OPERATE WITHOUT AN EFFECTIVE MEANS OF RECAPTURING THE SOLVENT VAPORS. FROM THE VERY FIRST DRYCLEANING MACHINE USING PERCHLOROETHYLENE THE EQUIPMENT WAS ENGINEERED TO RECLAIM THE SOLVENT. EITHER AS AN INTEGRAL PART OF THE MACHINE (DRY TO DRY UNIT) OR A SEPARTE UNIT USED FOR DRYING (RECLAIMERs), AFTER THE GARMENTS WERE REMOVED FROM THE DRYCLEANING MACHINE (TRANSFER UNIT). UNDER NORMAL CIRCUMSTANCES THIS TECHNOLOTY WAS CAPABLE OR RECAPTURING FROM 85% TO 90% OF THE SOLVENT LEFT IN THE GARMENTS. IN THE MID 60'S (BEFORE EPA), A NEW TECHNOLOGY WAS DEVELOPED TO FURTHER REDUCE THE LOSS OF SOLVENT. THE "SOLVENT ADBORBER" OR "SNIFFER" WAS A SEPERATE UNIT THAT WAS ADDED TO THE DRYCLEANING UNIT OR RECLAIMER THAT COLLECTED AND RECLAIMED THE SOLVENT VAPORS THAT WOULD HAVE BEEN VENTED TO THE ATMOSPHERE. THE ADDITION OF THE "SOLVENT ADBORBER" INCREASED THE EFFICIENCY OF THE DRYCLEANING OPERATION SO THAT UP TO 95% SOLVENT RECLAMATION IS ACHIEVABLE. WITH FURTHER TECHNOLOGICAL DEVELOPMENTS, E.G. REFRIGERATION AND AZETROPIC RECOVERY SYSTEMS, EVEN GREATER RECLAMATION IS BEING ACHIEVED IN MANY DRYCLEANING PLANTS. ALMOST 80% OF THE DRYCLEANING INDUSTRY IS PRESENTLY USING ONE OF THESE METHODS AS AN INTERGAL PART OF THE DRYCLEANING OPERATION.

2. THE DRYCLEANING INDUSTRY WAS THE FIRST INDUSTRY TO ACCEPT THE NEED FOR PROPER DISPOSAL OF HAZARDOUS WASTE. NCA HAS HAD A PROGRAM IN OPERATION FOR OVER FIVE YEARS (PRIOR TO RCRA) FOR THE LEGAL DISPOSAL OF HAZARDOUS WASTE DISPOSAL SERVICE. OVER 80% OF OUR MEMBERS ARE USING THIS SERVICE DESPITE THE FACT THAT MANY ARE

BELOW THE SMALL QUANTITY GENERATOR REQUIREMENT.

3. NEW DEVELOPMENTS AND IMPROVEMENTS IN DRYCLEANING MACHINERY AND AUXILIARY EQUIPMENT ARE TAKING PLACE AT A RAPID RATE. "STATE OF THE ART" REFRIGERATION, HEAT PUMPS, DRYCLEANING MACHINES THAT DO NOT VENT TO THE ATMOSPHERE (CLOSED LOOP) ARE THE STANDARD FOR NEW DRYCLEANING PLANT OPENININGS AND MUCH OF THE REPLACEMENT DRYCLEANING EQUIPMENT. TRANSFER UNITS ARE NO LONGER BEING MADE SO THAT ALL NEW INSTALLATIONS AND REPLACEMENTS WILL BE MORE EFFICIENT AND WILL FURTHER REDUCE EMISSIONS. THE COST OF THIS NEW EQUIPMENT IS HIGH. THE AVERAGE DRYCLEANING MACHINE (INSTALLED) IS IN THE AREA OF $30,000 TO $50,000. FOR MANY SMALL BUSINESSES, WHO HAVE RETROFITTED WITH SOLVENT ADSORBERS OR SIMILAR TECHNOLOGY, THE FINANCIAL BURDEN COULD BE FATAL. PLEASE REALIZE THAT THE AVERAGE DRYCLEANER IN THE UNITED STATES HAS A VOLUME OF $75,000. TO $125,000. ANNUAL SALES, EMPLOYS ONE TO THREE PEOPLE ON AVERAGE PLUS THE OWNER, WHO, MORE OFTEN THAN NOT, IS A PRODUCTIVE EMPLOYEE. HIS NET PROFIT AVERAGES 6 TO 8%. SO WE ARE NOT TALKING ABOUT "FAT CATS" THAT CAN BUY NEW EQUIPMENT WITHOUT GOING INTO SERIOUS DEBT. YES, THERE ARE DRYCLEANERS WHO DO BETTER, AS I HAVE MENTIONED, BUT THE BULT OF THE INDUSTRY IS REALLY "MOM AND POP" OR JUST A LITTLE MORE. THE INDUSTRY IS NOW OVER 20% KOREAN OWNED AND THEIR ENTRY INTO THE INDUSTRY HAS REALLY POLIFERATED IN THE LAST FIVE OR SIX YEARS. THEY ARE GOING THROUGH A LEARNING PROCESS AND HAVE LIMITED RESOURCES. OF GREAT IMPORTANCE IS THE FACT THAT A SUBSTANTIAL NUMBER OF THE DRYCLEANING MACHINES IN USE ARE TRANSFER UNITS (MOST RETROFITTED WITH A CONTROL DEVICE). THEY RANGE IN AGE FROM FIVE TO TWENTY FIVE YEARS OLD. MANY OF THE OLDER MACHINES ARE BEING REPLACED BUT IT IS AN EVOLUTIONARY PROCESS.

WHAT I BELIEVE IS NECESSARY IS FOR THIS COMMITTEE AND THE U.S. EPA TO RECOGNIZE THE FACTS AND THE REALITY OF THE SITUATION. A REALISTIC AND ACHIEVABLE OBJECTIVE WOULD BE THE PROTECTION OF THE POPULATION AT LARGE FROM UNREASONABLE RISK WITH OBJECTIVE OF FURTHER REDUCTIONS BUT A A REASONABLE RATE. THE PROBLEMS OF THE ENVIRONMENT IS A SERIOUS NONE THAT WE MUST IMPROVE AND CORRECT. I DO NOT BELIEVE THAT ANY BUSINESS OR INDUSTRY SHOULD BE EXEMPT FROM ITS RESPONSIBILITIES TO PARTICIPATE IN THE PROCESS.

WHAT I HAVE TRIED TO DO IS SHOW YOU BY THE FACTUAL DATA AVAILABLE IS THAT THE DRYCLEANING INDUSTRY, WITH FEW EXCEPTIONS, HAS ACCEPTED ITS RESPONSIBILITIES IN A EVER CHANGING WORLD AND HS RESPONED IN A POSITIVE AND RESPONSIBLE MANNER AND WILL CONTINUE TO DO SO IN THE FUTURE. WHAT IS ESSENTIAL TO MEET THE OBJECTIVES, THAT YOU HAVE THE RESPONSIBILITY TO ACCOMPLISH, IS A REASONABLE AND REALISTIC APPROACH. WHERE AN INDUSTRY HAS DEMOSTRATED ITS COMMITMENT AND WILLINGNESS TO PARTICIPATE IN THE PROCESS, IT SHOULD BE GIVEN THE CHANCE TO SUCCEED BUT YOU MUST LET IT SURVIVE IN ORDER ACHIEVE THESE GOALS.

I WOULD LIKE TO THANK ALLK MEMBERS OF THE COMMITTEE FOR THE OPPORTUNITY TO SHARE MY OPNIONS AND CONCERNS WITH YOU. AS I HAVE

STATED, YOU ARE NOT DEALING WITH A HOSTILE OR UNREASONABLE INDUSTRY. WE HAVE DEMONSTRATED OUR WILLINGNESS TO COOPERTE WITH GOVERNMENT REGULATIONS IN THE PAST TO ACHIEVE REASONABLE OBJECTIVES. I CAN ASSURE YOU OF OUR CONTINUED SUPPORT AND COOPERTION NOW AND IN THE FUTURE.

TESTIMONY FOR SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES AND ENERGY

NONDAY MAY 15, 1989

10:30 A.M.

THE BRONX, NEW YORK

DRAFT TESTIMONY DEALING WITH AVAILABILITY OF LOANS AND COVERAGE FOR UNDERGROUND MOTOR FUEL STORAGE TANKS:

CONGRESSMAN ENGEL AND MEMBERS OF THE COMMITTEE, THANK YOU FOR THE OPPORTUNITY TO ADDRESS THIS COMMITTEE ON AN EXTREMELY IMPORTANT ISSUE. MY NAME IS RAFAEL SANTANA I OPERATE A SERVICE STATION IN THE BRONX. WITH ME IS MY BROTHER PEDRO WHO OWNS AND OPERATES SEVERAL LOCATIONS HERE ALSO.

THE SERVICE STATION INDUSTRY OVER THE LAST SEVERAL YEARS HAS GONE THROUGH SOME DRAMATIC CHANGES. IN THE PAST, THE MAJOR OIL COMPANIES HAVE OWNED THE LAND AND TANKS OF SERVICE STATIONS. IN RECENT MORE YEARS THE OIL COMPANIES HAVE CHANGED THEIR MARKETING POLICIES AND HAVE DIVEST THEMSELVES FROM MANY OF THEIR SERVICE STATIONS SELLING THEM TO THE SERVICE STATION OPERATOR. FEDERAL LAW, THE PETROLEUM MARKETING PRACTICE ACT, REQUIRES SERVICE STATIONS OPERATORS BE OFFERED THE FIRST RIGHT OF REFUSAL WHEN AN OIL COMPANY WISHES TO SELL IT'S SERVISE STATION PROPERTY. MANY OPERATORS TOOK ADVANTAGE OF THIS OPPORTUNITY AND THINKING THEY WERE ACHEIVING THE AMERICAN DREAM. OWNING THEIR OWN SERVICE STATION AND BE TRULY INDEPENDENT BUSINESSMAN.

THIS AMERICAN DREAM, OVER THE LAST SEVERAL YEARS, HAS

TURNED INTO A NIGHTMARE. GOVERNMENT, LOCAL, STATE, AND FEDERAL, HAVE IMPLIMENTED REGULATIONS CONTROLING UNDERGROUND STORAGE TANKS. THE STATE OF NEW YORK HAS MAD IT'S REGULATIONS IN PLACE SINCE 1986, WHICH REQUIRE THE TESTING AND REGISTERING OF UNDERGROUND STORAGE TANKS ON FACILITIES WITH VOLUME OVER ELEVEN HUNDRED GALLONS. THE REGULATIONS ENCOURAGE THE REPLACEMENT OF UNDERGROUND STORAGE TANKS WITH STATE OF THE ART EQUIPMENT.

THE FEDERAL GOVERNMENT HAS NOW INTRODUCED REGULATIONS THAT ARE SOME WHAT MORE STRINGENT THAN THE STATE REGULATIONS. AN AGREEMENT IS BEING DEVELOPED BETWEEN NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION AND THE UNITED STATE ENVIRONMENTAL PROTECTION AGENCY WILL EVANTUALLY AMEND THE NEW YORK STATE REGUALTIONS TO BE CONSISTENT WITH FEDERAL REQUIREMENTS.

THE SMALL INDEPENDENT OPERATOR SUCH AS MY SELF IS IN A DILEMA. WE MUST UPGRADE OUR UNDERGROUND STORAGE TANKS HOWEVER, SUCH A SYSTEM COST BETWEEN $60,000 TO $100,000. SUCH CAPITAL INVESTMENT, IS USUALLY FUNDED THROUGH SECURE BANK LOANS USING OUR PROPERTY. HOWEVER, IN RECENT YEARS OUR PROPERTY VALUE, AS FAR AS BANK AND LOAN INSTITUTES ARE CONCERNED, ARE ZERO. ATTEMPTS TO SECURE A SECOND MORTAGE ON A PIECE OF PROPERTY WILL RESULT IN A DENIAL OF FUNDS. SHORTLY, THE FEDERAL REGULATIONS DEALING WITH UNDERGROUND TANK INSURANCE WILL BECOME EFFECTIVE. SERVICE STATIONS OPERATORS WILL HAVE TO PROVIDE FINANCIAL RESPONSIBILITY UP TO $1 MILLION DOLLARS, EITHER THROUGH INSURANCE, OR PROOF OF

FINANCIAL ABILITY FOR SUCH COVERAGE. TO DATE THERE IS NO INSURANCE AVAILABLE FOR UNDERGROUND TANK LEAKS. THE FEDERAL GOVERNMENT IS MENDATING A REQUIREMENT THAT IS IMPOSSIBLE FOR US TO COMPLY WITH. INSURANCE IS NOT AVAILABLE, AND IF IT WERE THE COST WOULD BE PROHIBITIVE, AND FEW SERVICE STATION OPERARTORS ARE ABLE TO PROVIDE FINANCIAL CAPIBILITIES OF PAYING FOR EXPOSURE OF A MILLION DOLLARS.

IF IN THE EVENT A CATOSTROPHIC SITUATION SHOULD ACCURE AND A LEAK DEVELOPES THE COST OF THE CLEAN UP OF SUCH A LEAK WILL PUT MOST SERVICE STATIONS OWNERS OUT OF BUSINESS. ATTEMPTS TO GET LOANS FROM FINANCIAL INSTITUTIONS TO COVER THIS TYPE OF EXPENSEE IN MANY CASES WILL RESULT IN NOT ONLY A DENIAL OF THE FUNDS BUT ALSO THE LIMINATION OF ALL OTHER CREDIT LINES CURRENTLY AVAILABLE.

INDEPENDENT SERVICE STATION OPERATORS, THOSE WHO OWN THEIR OWN PROPERTY, MAKE UP APPROXIMATELY 35% OF THE SERVICE STATIONS IN THIS STATE. MOST SERVICE STATIONS THAT ARE OWNED BY THE INDEPENDENTS ARE THE FULL SERVICE TYPE WHICH PROVIDE SERVICE, CAR REPAIR, AIR AND WATER TO THE PUBLIC. AS WE BECOME EXTINCT, THESE TYPES OF SERVICES WILL BECOME HARDER AND HARDER FOR THE PUBLIC TO ATTAIN.

WE ARE IN DESPERATE NEED OF ASSISTANCE. THERE ARE HOWEVER SEVERAL SOLUTIONS THAT COULD BE AFFORDED. ONE COULD BE FUNDED BY A PER BARRELL TANK FEE TO CLEAN UP LEAKS ON SERVICE STATIONS ON A FEDERAL, STATE OR LOCAL LEVEL. TWENTY-THREE STATES HAVE INSTITUTED SUCH A PROGRAM, AND I UNDERSTAND THAT THEY ARE WORKING SUCCESSFULLY. THE NEW YORK STATE

LEGISLATURE ADDRESSED THE PROBLEM IN THE LAST TWO SESSION AND HAVE BEEN UNABLE TO AGREE APON LEGISLATION THAT WOULD BE HELPFUL. WE ARE IN DEEP NEED OF YOUR ASSISTANCE AND WE URGE THIS BODY TO HELP US FIND A SOLUTION TO OUR PROBLEM. WE ARE NOT LOOKING FOR CHARITY WE ARE JUST LOOKING FOR ASSISTANCE THAT IS NOT AVAILABLE TO THE PRIVATE SECTOR. AGAIN I WOULD LIKE TO THANK YOU FOR THE OPPORTUNITY TO SPEAK AND TO BRING YOU OUR PROBLEMS AND HOPE THAT YOU WILL DO EVERYTHING YOU CAN TO ASSIST US.

Statement of the
American Wood Preservers Institute

before the

Committee on Small Business
Subcommittee on Regulation
U.S. House of Representatives

May 15, 1989

Mr. Chairman and Members of the Committee:

I am John F. Hall, president of the American Wood Preservers Institute. AWPI, with headquarters in the Washington, D.C. suburb of Vienna, Virginia, is a national trade association representing the wood preserving industry on environmental and related issues.

With me today is Mr. William E. Haynes, President and General Manager, Hatheway and Patterson, Inc., Mansfield, Massachusetts. Mr. Haynes' company produces a variety of treated wood products for industrial and residential use in the north-eastern states.

I will present some general information about the size, geographic distribution, principal products, and regulatory status of the wood preserving industry. Mr. Haynes will provide information about his company as an example of the financial difficulties faced by a specific small business in this industry.

Industry Profile

The industry is composed of about 480 companies, operating about 600 treating plants located in 48 states and Puerto Rico. Annual product sales amount to $1.8 to $1.9 billion. Total industry employment is estimated by the Department of Commerce at about 11,300 people. EPA estimated that 93% of our companies employ less than 100 people.

By impregnating wood products with EPA-registered pesticides, the industry extends the useful service life of utility poles, railroad ties, piers, docks, bridges, backyard decks, fences, and other products, by a factor of five or six times over the expected service life of untreated wood in those same applications.

A combination of vacuum and pressure, sometimes with elevated temperature, evacuates water and air from the wood cells and replaces them with the wood preserving pesticides. Wastes and residues from the process are handled and disposed of in accordance with applicable federal and state regulations.

To assure that our customers know the proper way to handle, use, and dispose of pressure treated wood, the industry, in cooperation with EPA, has developed a series of Consumer Information Sheets which accompany every batch or bundle of treated wood on its way to the user.

Financing is an Industry-Wide Problem

We appreciate the fact that you are conducting these hearings looking into problems faced by small business in obtaining financing for environmental or other reasons. It is a critical problem for the entire wood preserving industry, an industry composed primarily of small business companies.

EPA Acknowledges Problem

EPA's Office of Policy Planning and Evaluation recently issued a report entitled: "The Small Business Sector Study: Impacts of Environmental Regulations on Small Business." One of the ten industries specifically addressed in that September, 1988, report is the wood preserving industry. Portions of that report, commenting on the wood preserving industry, are appended to my testimony.

The EPA report notes that:

> In previous years as the industry was developing, and environmental concerns were not an issue, the practices of many wood preserving facilities eventually contributed to serious contamination of the surrounding area's soil and water. Many of these facilities have had to implement extensive cleanup operations to correct these problems. The cleanup costs have strained the financial resources of many firms severely, and several firms have gone bankrupt.
>
> Over the period 1988-1992, the cleanup of wood preserving facilities will continue, and wood preservers will be faced with new regulations governing the disposal of their hazardous wastes, the reporting of toxic chemicals, and the control of stormwater flows. . . .

> Management and reporting of hazardous wastes and toxic chemicals will add approximately $14,300 in annual costs to wood preservers' environmental expenses. These costs amount to about 32% of the 1976-1983 median net profits for wood preservers in both the 10-19 and 20-49 employee size category, and over four times the reported 1983 net profits. In addition to these costs, some potentially large costs of forthcoming waste disposal regulations and potentially large capital costs associated with waste-minimizing technologies have not been included in the estimates. These figures all suggest that some wood preservers may have great difficulty meeting environmental expenses.
>
> In addition to these increased annual costs, wood preservers may incur major construction costs to control stormwater. Although these regulations are still in the formative stages, the costs of some of the principal regulatory alternatives, such as construction of roofs or wastewater collection systems for storage yards, have been estimated to be about $200,000 even for small facilities. Capital costs of this magnitude amount to 150% of the median equity of wood preservers with fewer than 10 employees, and about 80% of the median equity of those with 10-19 employees. Should costs prove to be as high as the preliminary estimates indicate, small wood preservers would find it very difficult to meet these requirements.
> (emphasis added)

Additional Unnecessary Costs Recommended by EPA

Those costs, however, are virtually insignificant in comparison with the costs EPA would impose on the industry as a result of the regulations proposed by its Office of Solid Waste in December, 1988.

Implementation of the recently proposed Resource Conservation and Recovery Act rule would require an outlay for capital improvement of about $5.1 billion and for additional operating expenses for testing and remediation of about $800 million over

the first two years the rule is in effect. The industry's annual revenue requirement for compliance would be about $800 million per year.

It would be impossible for most wood preservers to finance the expenditures necessary to meet the proposed RCRA requirements, even under the assumption that the industry could successfully price its product to obtain the entire "annual revenue requirements" EPA considers to be the appropriate measure of prospective price impact.

Costs imposed on wood preservers to finance expenditures needed to meet the OSW's proposed rule would cause an average increase in the price of treated wood products of over 50%, with price increases in certain product categories exceeding 100%.

In contrast, the Congressionally mandated, multi-statute approach recommended by the wood preserving industry, by making use of good industry practice where it is already in place and extending regulation by tightening labelling and water monitoring requirements, would require an outlay of only about $80 million over the first two years it were to be in effect. This proposal would provide equal or better environmental protection and would be affordable to most of the industry.

The approximately 15% of the treating industry not currently meeting the requisite management practice standards could reasonably be expected to finance the expenditures necessary to meet them. Annual costs of compliance of about $15 million would be low enough to provide only minor impacts on the industry, product prices, and ultimate consumers.

Copies of the extensive industry comments filed with EPA on this recent and unreasonable proposed rule are available to Members of this Committee in reviewing the unnecessary regulation of a virtually non-existent problem at horrendous cost.

Again, thank you for your interest in the problems faced by small business concerns in financing investments and operating costs necessitated by environmental regulations.

United States
Environmental Protection
Agency

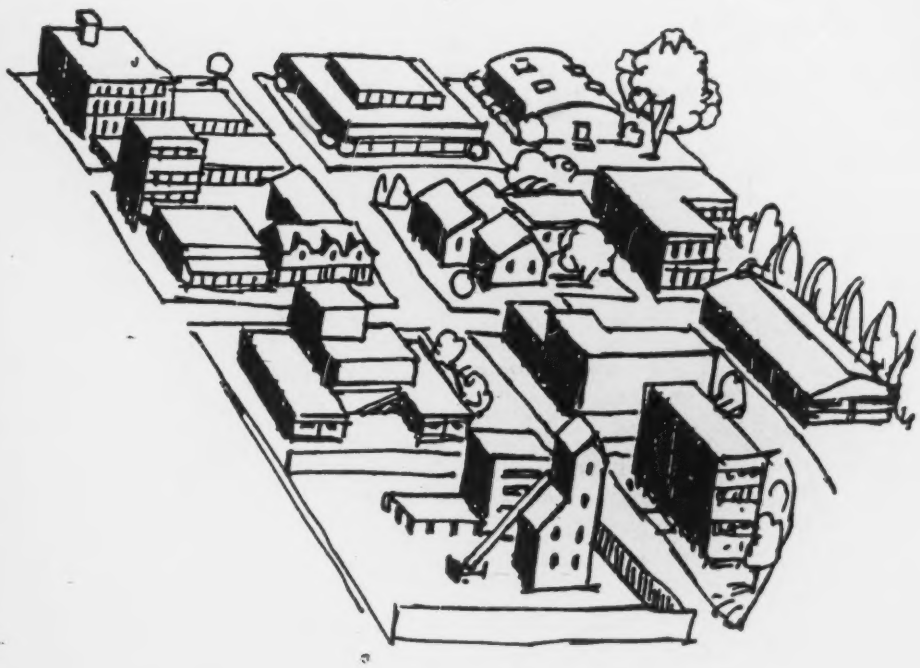
Office of Policy
Planning and Evaluation
Washington DC 20460

EPA 230-09-88-039
September 1988

EPA

The Small Business Sector Study

Impacts of Environmental Regulations on Small Business



98-596 16

THE SMALL BUSINESS SECTOR STUDY:

IMPACTS OF ENVIRONMENTAL REGULATIONS

ON SMALL BUSINESS

Prepared for

Economic Studies Branch
Office of Policy Analysis
Office of Policy, Planning and Evaluation
U.S. Environmental Protection Agency

By

Lyman H. Clark
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SEPTEMBER 1988

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This study was prepared with the guidance and assistance of EPA's Sector Study Workgroup. The workgroup participants were:

Allen Basala (Air)
Allen Jennings (Pesticides)
Karen Klima (Surface Water)
A. W. Marks (Drinking Water)
Elizabeth LaPointe (Solid Waste)
Michael Shapiro (Toxic Substances)
Ralph Luken (Policy) (Chair)

Appendix F on Gasoline Service Stations was prepared by Robert Burt of Meridian Research, Inc., Silver Spring, Maryland. Appendix I on Water Supply was prepared by A. W. Marks, Chief of the Economic, Policy Analysis, and Data Management Branch, Office of Drinking Water, U. S. Environmental Protection Agency.

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WOOD PRESERVING

The demand for wood products that can withstand the rapid deterioration brought on by insects, rotting, and fire has given rise to the wood preserving industry. Wood preserving facilities usually specialize in treating a limited range of products. Those using inorganic preservatives treat mostly dimension lumber, posts, and poles for insect and rot resistance and fire retardancy; plants using organic preservatives treat primarily poles, railroad ties, and pilings.

In 1986, there were 370 firms primarily engaged in wood preserving (SIC 2491). These firms employed 10,392 people and had total sales of approximately $850 million ($100,000 per employee). Almost half (43 percent) of these firms had fewer than 10 employees and 86 percent had fewer than 50 employees. Only 21 firms had more than 100 employees. Firms with fewer than 50 employees accounted for 43 percent of industry sales and 43 percent of industry employment. (See Table B-1.)

The U.S. Small Business Administration (SBA) classifies as small businesses all firms in SIC 2491 with fewer than 500 employees. Under this definition all of the firms in SIC 2491 in 1986 were considered small businesses.

There are two stages in the wood preserving process. First, the wood is preconditioned to reduce the moisture content, then it is treated with preservatives. The most common method of preconditioning is pressure steaming in a retort (cylinder), followed by vacuum drying. This method is widely recognized as producing a superior product. Other methods include seasoning in large, open yards; kiln drying; heating in a preservative bath under reduced pressures; and vapor drying.

Wood treating can use either a pressure or non-pressure process. In the non-pressure processes the wood is immersed in open tanks containing the preservatives. According to a 1985 survey, only 17 facilities use non-pressure processes today.[1] In the pressure process, the preservative is forced into the wood under pressure in a retort, or cylinder.

The layout of a typical pressure treatment facility includes three major processing areas:

1. A raw materials storage yard;
2. A treating cylinder (retort), or pressure vessel, with the necessary pumps, tanks and control equipment;
3. A boiler plant to heat the solution and to pressurize the cylinder;

Table B-1

SMALL BUSINESSES IN THE WOOD PRESERVING INDUSTRY - 1986

(SIC 2491)

	Employees Per Firm				
	1-4	5-9	10-19	20-49	50-99
Number of Firms	72	82	75	88	27
Cumulative Share of:					
Firms	21%	43%	62%	86%	93%
Sales	2%	8%	18%	43%	60%
Employment	2%	8%	17%	43%	59%

Source: U.S. Small Business Administration: Small Business Data Base (SBDB), United States Establishment and Enterprise Microdata (USEEM).

4. A seasoning and storage yard, including the cylinder loading track and auxiliary transportation facilities.

The steel treating cylinders (retorts), typically used in pressure treatment, are from 4 to 10 feet in diameter and up to 175 feet in length. These are the most important component of the plant.[2]

Wood preserving plants use both organic (oilborne) and inorganic (waterborne) materials. Some of the organic materials used are pentachlorophenol, and creosote solutions. Today, many plants in Georgia and Florida are doing away with creosote, because it has presented numerous problems concerning worker safety and excessive contamination of the soil and groundwater. The principal inorganic material used is CCA, a solution of copper, chromium, and arsenic salts. Other inorganic salts--principally borates, phosphates, and ammonium compounds -- are used as fire retardants. A 1985 survey showed that 63% of the wood treated was treated with waterborne preservatives, 25% with creosote solutions, 10% with pentachlorophenol and 2% with fire retardant chemicals.[3]

To characterize the typical wood preserving plant, it is necessary to differentiate between those plants treating with waterborne preservatives and those treating with oilborne preservatives.

The typical plant treating with waterborne preservatives uses CCA, has one cylinder 50-60 ft. long, and employs fewer than 12 people. The type of wood treated (primarily lumbers and timbers used for fences, posts, poles and decks) can be handled more easily and processed much faster than that requiring the oilborne treatment. Normal treating time in the cylinder is about two hours, enabling a plant to complete three to four charges a day. A 1985 survey reports an average of 797,040 cu. ft. of wood treated with waterborne preservatives per facility for that year.[4]

The typical plant treating with oilborne preservatives uses creosote and pentachlorophenol, operates two to three cylinders, 100 - 175 ft. long and employs 20-40 people. The wood treated here is primarily hardwood, used for poles, railroad ties, pilings and bridge switches. The treatment time is about 18 hours in the cylinder so that each cylinder charge takes one to two days. Because the pieces of wood treated here are generally much larger and heavier, more labor is required for handling and treating the wood. These facilities, needing more machinery and larger treatment and storage areas are physically larger than waterborne plants. The same 1985 survey reports an average of 1,451,790 cu.ft. of wood treated with oilborne preservatives per facility that year.[5]

ENVIRONMENTAL PROBLEMS

Almost all of the substances and chemicals used at a wood preserving facility are considered toxic or hazardous. In previous years, as the industry was developing, and environmental concerns were not an issue, the practices of many wood preserving facilities eventually contributed to serious contamination of the surrounding area's soil and water. Creosote especially tends to be rapidly absorbed into the soil and leaches into the groundwater. Many plants were ordered to create holding ponds to catch the waste runoff, but subsequent inspections found that the

substances were still leaching into the ground from the holding ponds and that the ground around the ponds was contaminated. Many of these facilities have had to implement extensive clean-up operations to comply with RCRA corrective action regulations. The cleanup costs have strained the financial resources of many firms severely and several have closed.

The principle waste streams generated by the wood preserving process are:

1. Leftover water from pressure treatment which may be sent to on-site surface impoundments or may be discharged into municipal sewers. On-site surface impoundments were standard years ago, but very few are in use today.

2. Wastes leached from the treated wood set outdoors to dry. Over time this would accumulate in the soil and groundwater.

3. Sludge collected in storage tanks and in treatment systems. The sludge is comprised of wood preservatives and chemical impurities.[6]

Ideally, wood preservers use what is called a "closed system". Most of the facilities constructed in the last 20 to 30 years use such a system. This method allows for the steam and condensate to be recycled and reused. Most of the waste accumulated is residue left over from cleaning out the cylinders and mixtures of oil, water, and preservatives. These wastes generated from the treatment process need to be disposed of in hazardous waste landfills.

Those facilities using pentachlorophenol, which contains low levels of certain dioxins, have a problem disposing of their wastes, because it is now illegal to dispose of any dioxin-containing wastes in a landfill. Incineration is the only acceptable method of disposal and there are no incinerators permitted at the present time to take this waste.[7] It is assumed that most plants are storing these wastes on site until there are disposal alternatives available. If and when incineration becomes an option, the supply and demand factor will most likely make it a very costly service.

ENVIRONMENTAL REGULATIONS

Because many wood preserving chemicals are toxic and many wood preserving wastes are hazardous, EPA has been looking closely at the industry's chemical use and waste disposal practices. In the early 1980's, the Agency reviewed the use of wood preservatives under FIFRA and decided to continue their authorization with certain modifations and use restrictions. Now, the Agency is proposing to regulate under RCRA some 700 wood preserving plants and about 2,000 sawmills that treat raw lumber.[8] The greatest impact will be on plants treating with creosote and pentachlorophenol. Under these regulations, costs for waste disposal, permitting, and corrective-action will be substantial. A summary of the principal environmental regulations that will affect the wood preserving industry during the period 1988-1992 is presented in Table B-2.

Paperwork requirements associated with these regulations will include applying for an EPA identification number and maintaining a manifest system to track

Table B-2

ENVIRONMENTAL REGULATIONS
for the
THE WOOD PRESERVING INDUSTRY
(SIC 2491)

Act/Regulation	Requirements	Cost to Small Business	Comments
Direct Impact			
RCRA: Listing WP Wastes	concrete pads under storage	$200,000	Regulation not final
RCRA: Land Ban - First Thirds	incineration, stabilization	$5,000 per year	Assumes 20 bbl of sludge/year
RCRA: Land Ban - Dioxin	testing, incineration	higher disposal costs	Alternatives not selected
RCRA: Land Ban - California List	testing, proper disposal	higher disposal costs	Maybe only penta plants
RCRA: Liner and Leachate Standards	double liners, leachate collectn	cost estimates not available	Will close disposal sites
RCRA: Corrective Action	close sites, repair damage	$200,000 to $2.0 million	Contaminated sites only
RCRA: Toxicity Characteristic	testing, disposal as haz. waste	higher waste disposal costs	Negotiations under way
RCRA: Generators of 100-1,000 kg/mo	manifest, proper handling	$3,680 initial $1,560 annual	Most firms now complying
SARA: Title III	recordkeeping and reporting of toxic chemicals	$1,000/yr: chemical reports; $9,000/yr: toxic release forms	Do some now If <10 emp, no txc rls frms
Indirect Impact			
RCRA: Hazardous Waste Regulations	higher waste disposal costs	undetermined	
Uncertain Impact			
CAA: Industrial Boilers NSPS	testing, install controls	undetermined	Most plants not affected
SDWA: Wellhead Protection	activity bans near wells	undetermined	May apply to few firms
TSCA: Chlorinated Solvents	undetermined selection stage	undetermined	May not apply to industry

disposal costs for the sludge will increase tenfold, from $0.50 to $5.00 per gallon.[12] This would raise the cost of disposing of a 55-gallon barrel of sludge from $28 to $275. The incremental cost associated with this regulation, therefore, is about $250 per barrel of sludge.

The amount of wastewater sludge generated by a wood preserving facility in a year can vary greatly. Plants that use steam treating processes can generate 100-200 barrels of wastewater a year. How this wastewater is treated and how much sludge is produced depends upon the technology employed. As discussed above, wood preservers are minimizing waste generation as much as possible. Many have switched from steam treatment to dry kilns or have switched to waterborne preservatives such as CCA. With these new technologies, wood preservers can reduce their sludge generation to less than 10 barrels a year. Increased waste disposal costs associated with this regulation, therefore, could vary from $2,000 to over $50,000 per year.

Given the tenfold increase in disposal costs, it is unlikely that wood preservers will continue to generate large quantities of wastewater sludge. The ultimate costs associated with this regulation may be the capital costs of installing alternative preserving technologies rather than the increased annual costs of sludge disposal. These capital costs could be large, however, over $100,000 in some cases.

RCRA: Land Ban - Dioxin

On November 8, 1986 the EPA land ban of certain dioxin-containing wastes went into effect. The restrictions are based on the requirement that extracts from wastes be tested for concentrations of specified constituents. Wastes whose extracts contained less than the specified concentrations could be land disposed; wastes generating extracts with higher contaminant levels would have to be treated prior to being land disposed. Because there is currently no permitted or certified capacity for incinerating or otherwise treating the affected dioxin-containing wastes, EPA has delayed the effective date of the rule for two years, until November, 1988.

Wood preserving plants using pentachlorophenol are most likely to generate dioxin-containing waste and will be affected heavily by this regulation. In attempting to estimate costs for incinerating dioxin wastes, EPA surveyed commercial facilities currently incinerating PCBs (there are no incinerators currently disposing of dioxin-containing wastes). Reported disposal prices were about $1,500 per metric ton.[13] The cost of incinerating dioxin-containing wastes, of course, may be different.

RCRA: Land Ban - California List

On July 8, 1987 the EPA promulgated regulations restricting land disposal of certain "California list" wastes: liquid hazardous wastes containing polychlorinated biphenyl (PCBs) above specified concentrations: and hazardous wastes containing halogenated organic compounds (HOCs) above specified concentrations (1000 mg/kg). EPA has defined the HOCs that must be included as any compounds having a carbon-halogen bond. Pentachlorophenol falls into this category and all facilities using this chemical may have to comply with the regulation. The effect of this regulation will be to require wood preservers to dispose of these wastes only at permitted hazardous waste facilities. This will increase waste disposal costs. No estimates are available of the potential cost.

Table B-3

PAPERWORK BURDEN

WOOD PRESERVING
(SIC 2491)

Regulation/Activity	One-Time Costs	Annual Costs	Comments
Small Quantity Generators			
Notification	$63		
Manifest & Recordkeeping		$108	Pick-ups twice yearly
SARA Title III			
Emergency Planning			
Inventory, Evaluation, Notification	$150		First Year Only
Emergency Planning Committee	$472		Second Year Only
Recordkeeping		$56	
Hazardous Chemical Inventory			
Reporting		$1,000	First year only
		$400	Subsequent years
Toxic Release Inventory			
Toxic Chemical Release Forms		$12,000	First year only
		$9,000	Subsequent years
TOTAL COSTS	$ 685	$13,164	First year
		$9,564	Subsequent Years
Other Potential Costs			
RCRA - Corrective Action			
Corrective Action Studies	$46,000 (site-specific)		If hazardous waste damage on site.

shipments of hazardous wastes and completing all of the emergency planning, notification, and release reports associated with handling toxic chemicals. Some wood preservers will have extensive paperwork requirements associated with corrective action regulations. The costs incurred by this paperwork burden are presented in Table B-3.

Regulations with a Direct Impact

RCRA: Generators of 100 to 1000 kg/mo

The Hazardous and Solid Waste Amendments of 1984 require EPA to regulate generators of hazardous wastes that produce between 100 and 1000 kilograms per month. The EPA requirements include obtaining an EPA identification number, maintaining a uniform manifest system, installing management controls, and meeting a limited set of performance standards. EPA's final rule was promulgated in March 1986 and became effective September 22, 1986.

The costs to a small wood preserving plant based on EPA estimates are as follows:[9]

	Initial	Annual
Manifesting, Recordkeeping, Packaging & Labeling	$2,230	$ 220
Transportation Costs		$ 840*
On-site Accumulation Costs	$1,450	$ 50
Disposal		$ 250
Treatment		$ 200
Totals	$3,680	$1,560

Compliance costs for an individual firm may vary depending on waste characteristics, proximity of the landfill, and site-specific waste disposal practices already in effect.

The paperwork burdens associated with this regulation include a one-time requirement to obtain an EPA identification number and annual recordkeeping requirements associated with the manifest system. EPA estimates the cost of obtaining the identification number to be about $63[10] and the annual cost of maintaining the manifest to be approximately $108.[11] These costs are included in the table above.

RCRA: Land Ban - First Thirds

EPA's land disposal regulations for the first third of the scheduled wastes listed under RCRA Section 3001 require wood preservers that use creosote and/or pentachlorophenol to treat wastewaters and wastewater treatment sludges to the concentration levels achieved by treating wastewaters by chemical precipitation and the resulting sludges by incineration and stabilization. EPA estimates that the

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* Yearly transportation costs have been estimated at $1,882, when the waste must be transported more than 200 miles.

RCRA: Liner and Leachate Collection Standards

All new, replacement and expanded landfills and surface impoundments continuing to receive waste after Nov. 8, 1984 are subject to Minimum Technology Requirements. The rule sets minimum design standards for various types of hazardous waste management facilities. These requirements are primarily for double liner containment and collection systems. Only plants managing waste on-site are affected. The compliance deadline for interim status surface impoundments is Nov. 8, 1988.

Most wood preservers with surface impoundments will close them rather than pay the high costs associated with meeting these standards. Thus, the principal effect of these standards upon wood preservers will be to accelerate corrective actions and closures at wood preserving sites that have landfills or surface impoundments. No estimates of the costs of these activities are available.

RCRA: Listing of Wood Preserving Wastes

EPA is considering listing as hazardous wastes several waste streams generated by the wood preserving industry. Some of the wastes targeted are dripage, wastewater, wastewater treatment residuals, and process residuals.

This regulation would require wood preservers either to protect their treated wood from rain by constructing coverings for the drip pads and storage areas, or to collect and then treat the rainwater that falls on their drip pads and storage areas. An EPA Economic Impact Analysis estimates that compliance costs would range from about $200,000 for a small wood preserving plant to almost $800,000 for a large plant.[14] These estimates assume that the drip pads and storage area at a small wood preserving plant cover 1/4 to 1/2 acres.

RCRA: Toxicity Characteristic

According to 40 C.F.R. § 261.20, a solid waste is a hazardous waste if it exhibits any one of four specific characteristics identified by the RCRA regulations. These characteristics are ignitibility, corrosivity, reactivity and EP toxicity. A solid waste exhibits the characteristic of EP toxicity if, using approved testing methods, the extract from a representative sample of the waste contains any of the contaminants listed in Table I of 40 C.F.R. § 261.24 at a concentration greater than the threshhold value given.

On June 13, 1986 EPA proposed amendments to hazardous waste identification regulations under Subtitle C of RCRA by expanding the Toxicity Characteristic to include 38 additional chemicals and by introducing a new extraction procedure to be used. EPA also introduced a second generation leaching procedure, the Toxicity Characteristic Leaching Procedure, (TCLP), used to address the mobility of organic and inorganic compounds in the ground.

Two wood preserving wastes already trigger the characteristic of EP Toxicity: arsenic (>5 mg/l) and chromium (>5 mg/l) and must be managed under RCRA.[15] The proposed amendment will include three creosol compounds and three chlorophenol compounds typically found in wood preserving wastes. The rule will probably be finalized in August, 1988. When this goes into effect, these additional compounds

will be added to the list of wood preserving wastes that are considered hazardous and must be disposed of in permitted facilities. Because these substances are already handled by wood preserving facilities as hazardous wastes, no additional costs should be incurred.

RCRA: Corrective Action

The final HWSA codification rule requires that any Subtitle C permit issued to a RCRA facility after the date of enactment must require corrective action for all releases of hazardous wastes from solid waste management units (SWMUs) as well as hazardous waste management units at the facility. The final rule grants EPA the authority to issue corrective action orders to interim status facilities to clean up releases from both solid and hazardous waste management units on a site-specific basis. This rule went into effect on July 26, 1985.

Many of the wood preserving facilities in the south, primarily Georgia and Florida, are presently engaged in extensive clean-up activities. As discussed before, these plants engaged in practices that caused serious contamination of the soil and water. The law gives them until November 8, 1988 to clean up and dispose of their wastes in a specified landfill. One plant in Georgia spent $200,000 in clean-up costs; others are spending $1 to $2 million.[16] The costs of corrective action under this regulation will depend on the degree of contamination, which in turn depends on factors such as permeability of the soil, how long the facility has been operating, what waste disposal practices were used, etc. Thus, the corrective action costs are highly site-specific and are directly related to the environmental problems at each site.

The paperwork burdens associated with this regulation include preparing plans, periodic reports, final reports, and summaries. Substantial additional burdens may be imposed on a site-specific basis depending on whether contamination of the soil and/or groundwater is discovered. EPA estimates a one-time cost per facility for paperwork activities of $46,000.[17]

Title III of SARA

Sections 302 - 304 of SARA impose requirements for notification, emergency planning, and emergency notification on any facility using, processing, or storing extremely hazardous substances in amounts above the established threshold levels for those substances. EPA has estimated costs per facility for this rule over a three-year period, FY'87 - FY'89. First year costs which include inventory, evaluation, and notification are about $150. Projected costs for the second year, $472.50, are much higher. This assumes that the facility will participate in the development and implementation of the community's Emergency Planning Committee. Third year costs, primarily recordkeeping, are estimated to be about $56.[18] The wood preserving industry has requested clarification from EPA as to whether certain of their chemicals or compounds thereof are actually listed as extremely hazardous. They already report pyrene, a constituent of creosote, as extremely hazardous.

Sections 311 and 312 of SARA require businesses to submit Material Safety Data Sheets (MSDS) or alternative lists as well as hazardous chemical inventory forms to three government agencies: the State Emergency Response Commission, the local Emergency Planning Committee, and the local Fire Department. The MSDSs are the

same forms already required by the Occupational Health and Safety Administration (OSHA), which establishes the reporting thresholds. Section 311 requirements were effective on October 15, 1987; Section 312 on March 1, 1988. EPA estimates that the costs to comply with sections 311 and 312 will average $1,000 per facility.[19] These costs will depend upon how many MSDSs are required and whether the MSDSs are supplied by vendors. All wood preservers must comply with Sections 311 and 312 and should be doing it now.

Section 313 requires facilities to complete a toxic chemical release form for each toxic chemical that was manufactured, processed, or otherwise used in quantities exceeding the established toxic chemical threshold quantity during the preceding calendar year. Section 313 applies only to businesses within SIC codes 20 - 39 (manufacturing) and exempts from reporting all facilities with fewer than 10 employees (most of SIC 2491 -- See Table B-1). Section 313 went into effect in June 1987. Toxic chemical release forms are to be submitted annually beginning in 1988. The typical facility submitting 10 forms would expend about 400 labor hours a year. The forms are technical and lengthy and ideally should be filled out by a chemist or an engineering specialist. The industry is recommending that facilities file a form for each listed chemical (or compound thereof) in a solution to insure compliance with the law.[20] This would indicate that EPA's estimate of first year costs for this rule of $12,000 to $13,000 per facility is not an overstatement. EPA estimates second year costs to be lower, about $9,000.[21] These costs could also be higher given that threshold levels for reporting probably will be decreased.

EPA considers all of the requirements associated with Title III of SARA to be paperwork requirements. The paperwork costs incurred by this regulation are the costs estimated above.

Regulations with an Indirect Impact

RCRA and CERCLA and CWA: Waste Disposal Regulations

Under CERCLA and RCRA and their subsequent amendments, EPA is issuing several regulations governing the transportation, storage, treatment, and disposal of hazardous and nonhazardous wastes as well as standards for corrective action for hazardous waste and toxic substance spills. Regulations under the CWA on the ocean dumping of wastes will also have an impact on waste disposal practices. The list of regulations that fall into this category includes:

RCRA	Subtitle C Location Standards
	Subtitle D Criteria
	Hazardous Waste Burning
	Land Ban - Soil and Debris
	Hazardous Waste Tank Standards
CERCLA	National Contingency Plan
	CERCLA Settlement Policy
CWA	Ocean Dumping

As discussed above, many wood preserving companies formerly disposed of their wastes on site. These companies are now having to upgrade their disposal practices to meet these new EPA standards. In most cases, the wood preserving companies will close their waste disposal facilities and correct any damage to the soil and groundwater. They will then have to find disposal alternatives off of their plant sites. EPA's RCRA, CERCLA, and CWA regulations will affect wood preservers indirectly by making it more difficult and more expensive for them to dispose of their wastes off-site. Unfortunately, no estimates are available of the likely magnitude of such cost increases.

Regulations with an Uncertain Impact

CAA: Industrial Boilers NSPS

Standards of performance limiting emissions of sulfur dioxide (SO_2) from coal and oil-fired industrial, commercial, and institutional boilers were promulgated on December 16, 1987.

Some wood preservers use coal or oil-fired boilers in the Boultonizing process (preconditioning the wood) or to fire kilns, but the majority of facilities use wood chips or are switching to the use of wood chips.[22] The impact of this regulation on the industry as a whole is probably minimal, but because no Regulatory Flexibility Analysis has been prepared, the potential impacts remain uncertain.

CWA: Review

The Water Quality Act of 1987 requires EPA to establish a schedule for the review/reevaluation of effluent guidelines and standards. This review may have an impact on the wood preserving industry.

SDWA: Wellhead Protection

In June 1986, the Wellhead Protection Act (WHP) was added as an amendment to the SDWA. The WHP is to be a voluntary program carried out by the individual states. The location of wellheads would be identified and activities and facilities within a certain area surrounding the wellhead would be examined for possible contaminants. Under the WHP, certain wood preserving activities, at plants that are located near drinking water wells could be banned. The number of such firms and the potential impact upon their activities has not yet been determined.

TSCA: Chlorinated Solvents

An interagency regulatory group, the Chlorinated Solvents Project, is investigating options for regulating chlorinated solvents. This interagency group consists of representatives from EPA, FDA, OSHA, and The Consumer Products Safety Commission (CPSC). This project is currently in the option selection stage for the dry cleaning industry. Wood preserving is not one of the industries targeted for future regulation, but wood preservers do use chlorinated solvents in their process.

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IMPACT OF THE REGULATIONS

Table B-4 presents a financial profile of wood preservers over the 1976-1983 period. During this period, the median wood preserving companies in both the 10-19 and 20-49 employee size categories had sales of approximately $1.3 million per year and net profits of about $50,000 on equity of about $300,000. These figures may be misrepresentative, however, because the major environmental expenditures for wood preservers did not occur until the end of the survey period. In 1983, the median wood preserving company included in SBA's statistics had sales of $1.3 million, but net profits of only $4,000 on equity of about $550,000, and the median wood preserving company with 20-49 employees experienced a loss of $3,400.

The environmental costs facing a typical wood preserver with 20 employees are summarized in Table B-5. Firms with hazardous waste problems remaining on their sites will face very large corrective action costs, but even the firms that have corrected their problems will face very large costs from new environmental regulations. While the annual costs for firms without hazardous waste problems are about 32% of median net profits for the 1976-1983 period, they are about four times median 1983 net profits, and the capital costs are very high -- about 66% of the equity of the median firm over the 1976-1983 period and about 37% of 1983 equity. For firms at the lower quartile of the industry, the capital costs amount to about 130% of their average equity over the 1976-1983 period, and almost 200% of their equity in 1983. These figures and the list of environmental regulations facing the wood preserving industry suggest that many wood preserving companies could have great difficulty meeting the environmental requirements.

CONCLUSION

Over the past several years, wood preservers throughout the country have been making dramatic changes in their facilities and processes in order to correct environmental problems. These changes have been extremely expensive and many wood preservers have had to close their facilities because they could not afford the required environmental actions. Over the period 1988-1992 the cleanup of wood preserving facilities will continue and wood preservers will be faced with new regulations governing the disposal of their hazardous wastes, the reporting of hazardous and toxic materials handled on site, and the control of stormwater runoff. More wood preserving wastes will be considered hazardous and more of these wastes will be banned from land disposal facilities. The problems associated with these new regulations may involve not only increased costs, but also the unavailability of disposal sites. Wood preservers now are finding that there are no disposal alternatives available for their pentachorolphenol wastes.

A comparison of the estimated costs of recent and forthcoming environmental regulations with typical industry financial statistics suggests that many wood preservers will have difficulty meeting the regulatory requirements.

Table B-4

FINANCIAL PROFILE : 1976-1983
(median values in $1,000)

WOOD PRESERVING
(SIC 2491)

	Number of Employees per Firm					
	1-9	10-19	20-49	50-99	100+	All Firms
Net Sales	$303	$1,000	$1,712	$4,552	$9,538	$1,292
Expenses	266	899	1,616	4,159	8,969	1,191
Net Profit	18	51	48	196	285	51
Assets	249	493	809	2,891	5,148	538
Equity	133	253	391	954	2,115	307
Return on Equity	14%	20%	12%	21%	13%	16%

Source: U.S. Small Business Administration: Small Business Data Base (SBDB), Fin/Stat File.

Table B-5

REGULATORY COSTS FOR TYPICAL SMALL BUSINESSES
in the
THE WOOD PRESERVING INDUSTRY
(SIC 2491)

Firm #1: 20 employees, sales = $1.3 million/yr, net profit = $50,000/yr, equity = $300,000. No hazardous waste problems on site.

Act/Regulation	One-Time Costs	Annual Costs
SARA: Title III		
311 & 312	-	$ 1,000
313	$ 3,000	$ 9,000
RCRA: Generators of 100-1,000 kg/mo	$ 3,680	$ 1,560
RCRA: Land Ban - First Thirds		$ 5,000
RCRA: Land Disposal Bans, Toxicity Characteristic	-	increased disposal costs
RCRA: Listing of Wood Preserving Wastes	$ 200,000	-
TOTAL COSTS	$ 206,680	$16,560 + increased disposal costs

Firm #2: 20 employees, sales = $1.3 million/yr, net profit = $50,000/yr, equity = $300,000. Hazardous waste problems on site.

Act/Regulation	One-Time Costs	Annual Costs
SARA: Title III		
311 & 312	-	$ 1,000
313	$ 3,000	$ 9,000
RCRA: Generators of 100-1,000 kg/mo	$ 3,680	$ 1,560
RCRA: Land Ban - First Thirds		$ 5,000
RCRA: Land Disposal Bans, Toxicity Characteristic	-	increased disposal costs
RCRA: Listing of Wood Preserving Wastes	$ 200,000	-
RCRA: Corrective Action	$200,000 - $2 million	-
TOTAL COSTS	$400,000 - $2.2 million	$16,560 + increased disposal costs

STATEMENT

William E. Haynes

Hatheway & Patterson Company, Inc.

before the

Committee on Small Business

Subcommittee on Regulation

United States House of Representatives

May 15, 1989

Mr. Chairman and Members of the Committee:

I am William E. Haynes, President and General Manager, Hatheway & Patterson Company, Inc., of Mansfield, Massachusetts. My company has been in the wood treating business since 1927, and we currently employ 45 people with an annual payroll of about $750,000. In making this statement before your committee, I am speaking as a member of the American Wood Preservers Institute, but my comments come mostly from my own day-to-day operational experience within my

own business. I feel that my experiences are representative of most other companies in the wood preserving industy.

My company produces a wide variety of pressure treated wood products primarily for markets in the Northeast. These products include both industrial and heavy construction items such as utility pole crossarms, highway guardrail systems, bridge and dock timbers; and residential or do-it-yourself items such as lumber for backyard decks, landscaping, and fencing.

We use three EPA registered wood treating chemicals -- pentachlorophenol and CCA (chromated copper arsenate) wood preservatives, and a fire retardant formulation. We currently meet or exceed every federal, state, and local environmental regulation; however, we have had to make a considerable effort to correct problems which were caused by unfortunate, but not ill-intended past practices. During the past fifteen years we have had to make extensive modifications to our process equipment and our operating practices to achieve a "zero-discharge" operation. We should note that these process changes necessitated some product changes, which in turn

required changes in the marketing of our products, thus compounding the overall problem. To correct problems caused by past practices we have eliminated sources of potential releases of hazardous materials, drastically reduced the generation of hazardous waste within the process equipment, undertaken extensive hydrogeologic studies of the process plant location, and installed systems to remove sub-standard groundwater and recycle it into our manufacturing process.

Lest you get the wrong impression, I want to take a moment to assure you that if you visit our manufacturing plant you will find it neat, clean, orderly, well engineered, and well maintained. We actually have a small stream flowing through our 38 acre facilty, complete with a rather quaint waterfall. With extensive and expensive testing we have demonstrated that the water quality in that stream actually improves as it passes through our plant, perhaps due to the aeration by the waterfall. My own children and the family dog love to play in that stream, and I do not have the slightest reservation about their doing so.

All of our environmental improvements have been costly,

and we have also found it necessary to expand our operations to generate the necessary cash flow to support the costs of environmental protection and remediation, and to pay the overhead costs of managing these programs, such as the employment of a full time environmental affairs and safety director. All of the environmental issues effect the financial condition of our business, and it is the effect of environmental concerns on our capital raising ability that I wish to address here today.

Over the past several years, we have experienced an ever increasing reluctance on the part of banking and other financial institutions to lend us money for any purpose. In the invitation we received to appear before this committee you expressed a concern that "small businesses have special problems obtaining capital to finance environmental remediation." I feel it very important that you appreciate that the problem goes substantially beyond obtaining capital for environmental remediation to that of obtaining capital for any purpose whatsoever. You have correctly perceived that an environmental problem can destroy the value of a business' collateral; however, even a potential or perceived problem can

have the same effect.

The net effect to us of the financial liabilities created by CERCLA (Comprehensive Environmental Response, Compensation, and Liabilties Act of 1980, 42 USC sec 9601 et seq.) and RCRA (Resource Conservation and Recovery Act of 1976, P.L. 94-580, 42 USC), and equivalent Commonwealth of Massachusetts law such as M.G.L. Chapter 21E, is that no bank will lend us money secured by a mortage on our real estate. Of course, we must continue to pay off the existing mortgage with the resulting cash drain. When we need additional buildings or real property improvements, many of which have an enviromental protection benefit, we must finance them with our internal cash flow--a tough thing to do! When financing new production machinery or equipment, we find that the banks will loan the value of the machinery as individual components, but we have to absorb the cost of construction and assembly which as a rough rule of thumb is about equal to the raw machinery cost. In the area of working capital financing secured by inventory and receivables, we find that we receive less flexible terms than appear to be standard in the banking industry. For example where banks typically allow other wood product

manufacturers and wholesalers financing up to 90 percent of their accounts receivable less than 90 days old, we get a more restrictive limit of 75% of receivables less than 60 days old. We experience similarly more restrictive financing of inventory. Additionally with a overall limiting cap on the amount we can borrow, the net effect for us has been that for most of the time in the past several years, our bank really has been secured with our receivables alone, and our extensive inventory has been almost irrelevant as a means of generating working capital. I must add, however, that these issues do not appear to have resulted in our having to pay higher than normal interest rates.

The cloud of environmental issues also has reduced the willingness of some banks to consider lending us money on any basis, for any purpose, with any security. We have been told directly by two major Boston area banks that they will not consider us as as a customer for any type of lending as long as there are any unresolved environmental issues facing our business. Apparently this attitude arises from fears and some actual legal cases that the lending institution may be considered to be another "deep pocket" potentially responsible

person if its customer becomes unable to meet costs of environmental remediation.

Another consideration in this issue may be that environmental liability insurance is unavailable. As are almost all companies, we are forced to 'go naked' in this area due to the inability to obtain insurance even for sudden catastrophic events which could damage the environment and thus incur cleanup costs. I get the impression that, regardless of what is written in the laws, the banks have a lower level of confidence in their security interests when environmental issues are involved with a customer as contrasted with other potential disasters that can strike any business without warning such as, for example, a product liability claim. My experience also tells me that Banks, while recognizing all of the situations I have discussed, have not developed any in-house expertise in environmental matters to help them make decisions which could be of benefit to their customers.

In view of all the pressures and problems I have mentioned, I consider our mere survival in business to be

quite an achievement. We have had to work extremely hard, be conservative in our business ventures and downright austere with the way we spend money, although we do provide our employees competetive wage rates and benefits. We have had to forego many business opportunities and beg the indulgences of our loyal suppliers when we are slow to pay their invoices. The stockholders, who are basically my brother and sisters and our key employees, have not been paid one cent of dividends, as all our earnings have had to be reinvested in the business.

As environmental law has evolved, it appears to me that an underlying principle is that if there is an environmental problem with the land, the government looks first to the landowner to assume all the cost of correcting that problem. If the landowner were to discover a windfall asset associated with his land, say an oil discovery or buried treasure, the government would be right there to share in his good fortune by way of taxation. In the opposite case of the discovery of a major liability associated with the land, would it not then be fair for the government to assist the landownder in his mis-fortune. Beyond this rhetorical question, I do have a

few suggestions I would ask you to consider.

Perhaps some mechanism of government loan guarantees could be created along with the developement of specialized expertise in these environmental matters within the S.B.A. Perhaps the language in law and regulation can be clarified to strengthen the confidence of banks in their security interests in non-real property assets. If private insurers will not write insurance for sudden catastrophic occurences resulting in environmental damage, perhaps a government sponsored program similiar to Federal Flood Insurance could be established. Perhaps tax law amendments could permit special "sinking fund" arrangements from current operations to meet anticipated future costs or to allow amendment of past tax returns to account for now realized liabilites from past operations. Perhaps Congress could mandate a cost containment program for environmental testing and remediation programs.

Let me give an example of my last suggestion. The E.P.A. has very rigid protocols for environmental testing. I haved watched this testing being done and I have paid the bills. Suppose there is a need to sample soils or groundwater at some

depth below the surface. This usually entails drilling a 2" hole to that depth. Whether or not a well casing is placed in the hole, E.P.A. procedures require the hole be 'grouted' with a special sealing material, an effort and expense which at least equals the original drilling. This requirement is apparently prompted by a concern that contamination, say from an old settling lagoon, could pass through the drill hole in a non-permeable stratum and contaminate another zone. In my experience, I have seen this procedure followed with exacting care by our consulting environmental engineers, when the soil samples taken every two feet in the borehole clearly indicated highly permeable soils all the way down. ..All that effort to prevent water from flowing through a 2" hole when it can almost just as easily pass through the surrounding acres of permeable soils. Could not more discretion be given to the project scientists and engineers to make cost saving decisions, thus reducing the financial burdens on the person paying for the studies. If it is reasonable to consider "cost containment" in health care, is it not reasonable to consider it in environment care.

As a final comment, Mr. Hall has discussed the potential

impact of proposed RCRA rulemaking on our industry. I have read the proposed rule and see that the only possible means of compliance by our business would be the full enclosure of our operations by what would have to be a huge building. Such a huge building would require a full water sprinkler system for fire protection in accordance with the Massachusetts Building Code. I reasonably estimate that the sprinkler system alone in this huge building would cost more than my business has earned in its entire existence, and remember, it would be "real property" for which no bank will currently lend me one cent. I will let you draw your own conclusions of the net impact of such a regulation.

Thank you for giving me this opportunity to present my problems concerning environmental regulations and the resulting impact on the financing of our business.

Testimony of
John M. Campbell, Jr.
Manager, Environmental Programs
General Electric Capital Corporation
before the
Subcommittee on Regulation,
Business Opportunities, and Energy
Committee on Small Business
U.S. House of Representatives

May 15, 1989

Good morning Mr. Chairman and members of the Subcommittee, my name is John Campbell, and I am responsible for environmental matters at the General Electric Capital Corporation (GECC). Before addressing the issue of how environmental problems affect industrial and commercial lending activities, I will take a moment to describe the financial markets in which GECC participates.

GECC provides a broad range of financial products to meet different business needs, including short and long term debt for corporate financing and restructuring, project financing for industrial construction, commercial real estate financing, and financing for business assets ranging from manufacturing and construction equipment to aircraft, trucks and automobiles. In addition, GECC is the nation's leading fleet management company, and supplier of private lable credit for retail establishments. GECC provides financial products to businesses of all sizes. GECC is a part of the General Electric Financial Services Company

which also includes Employers Reinsurance Corporation, which sells security to primary insurance companies in the form of assured payment for future claims, and Kidder, Peabody which is a major New York investment banking firm.

Until recently, environmental issues in general and hazardous waste problems in particular seldom affected the practices of the financial services industry. In the past, environmental programs specified standards or technology which had to be met by certain processes or companies. Once met, lenders were confident that their collateral was protected and that borrowers would not be subject to unforeseen environmental costs which could impair their financial condition. Thus, in the past, lenders' principal environmental concern was whether or not a prospective borrower was fully permitted and in compliance with applicable state and federal standards.

New Environmental Regulatory Programs Heighten the Importance of Environmental Issues in Financial Transactions

In recent years, federal programs and related state programs have caused lenders to more carefully examine environmental issues in general, and hazardous waste problems in particular, when underwriting financial transactions. Indeed, lenders are now modifying some of their lending practices when environmental problems are present because of these programs.

The two federal environmental programs which have the most significant impact on lender practices are the Resource Conservation and Recovery Act as amended by the Hazardous and Solid Waste Act Amendments (RCRA),1/ and the Comprehensive Environmental Response, Compensation and Liability Act as amended by the Superfund Amendments and Reauthorization Act (Superfund).2/ Other environmental programs are significant in lending but I will limit my remarks here to the programs which deal with hazardous substances.

RCRA and Superfund can affect transactions in two ways. First, for some prospective borrowers, the costs of meeting the requirements of these programs can be sufficiently great to create credit risk, which must be mitigated if financing is to be provided. Second, under certain circumstances these programs can impose liability on lenders for environmental conditions at a borrower's property.

RCRA and Superfund Create a Credit Risk

RCRA can create a credit risk through the corrective action and, or, closure programs which apply to all facilities which treat, store or dispose of hazardous waste. While cleanup standards have yet to be set for these programs, draft proposed rules of the Environmental Protection Agency (EPA) indicate that they will be stringent, and the

1/42 U.S.C.§6901 et seq.

2/42 U.S.C.§9601 et seq.

cost of compliance with them will be substantial. Moreover, as currently drafted, the standards will not be achievable in all instances with currently available technology.

The most stringent portion of EPA's draft proposed regulations would require that national primary drinking water (or equivalent) standards be met in groundwater which is found under facilities which have been or are used to treat, store or dispose of hazardous waste. This would be required even though such groundwater may be neither potable, nor have other potential uses.

Today, lenders must underwrite financing for companies which have treatment, storage or disposal facilities as though the stringent corrective action standards were in place because EPA is already investigating such facilities and will be issuing cleanup orders this year. Standards of the RCRA closure program are similar to those of the corrective action program but the closure program applies to facilities which treat, store or dispose of hazardous waste at the time they are closed. In addition, the closure program is being applied to facilities which treated, stored, or disposed of hazardous waste in the past, regardless of whether or not they needed a permit to do so. These programs can pose a particularly serious problem in the financing of industrial real estate purchases, because the cost of the corrective action and closure programs can be enormous. In some cases these costs may exceed the value of the facilities being financed.

Moreover, when auditing prospective industrial borrowers prior to funding we frequently must look for waste management areas on the property which are no longer in use, because borrowers can be liable for cleanup of such areas under RCRA, regardless of whether or not they were responsible for waste disposal or were even aware of past disposal practices.

Superfund can also create a credit risk which lenders must now consider. Superfund is commonly thought of as a program to remediate abandoned waste management facilities. Indeed, some potential borrowers are or will be identified in the future as potentially responsible parties (PRP) because they used such facilities in the past. However, this is not the only Superfund concern potentially affecting the creditworthiness of a prospective borrower. EPA can also use its Superfund authority to facilitate cleanup of hazardous substances released from operating industrial properties which only generate such substances but do not treat, store or dispose of them onsite so as to fall within the RCRA corrective action or closure programs. As such, lenders must anticipate how EPA could use its authority to require cleanup at a prospective borrower's property.

Lender Liability for Borrowers' Environmental Problems

Superfund and RCRA also can affect lender practices because a lender itself can be found liable for cleanup of hazardous substances at or associated with a borrower's property if that borrower subsequently

defaults on its loan commitment and the lender takes steps to protect its security interest. The fear of lender liability affects a lender's willingness to make certain financial transactions, and it deters them from participating in the cleanup of contaminated properties after loans are made.

While lender liability concerns are not new, they assume a greater significance in financial transactions today because the EPA and private parties appear to be attempting to narrow the existing exemption from liability provided in Superfund. At least two such cases are now being litigated, including United States v. Nicolet,[3] and United States v. Fleet Factors.[4]

Superfund provides that lenders are excluded from the definition of owners or operators which are liable for releases of hazardous substances as long as they hold only indicia of ownership to protect their security interest and do not become involved in the management of the facility from which the release took place.[5] Lenders' exemption from liability was affirmed by the courts in United States v. Mirabile[6] and United States v. Maryland Bank and Trust.[7] The more recent Nicolet and Fleet Factors cases are problematic because

[3] Civil Action No. 85-3060(E.D. PA.).

[4] Civil Action No. CV87-070(S.D.GA.).

[5] 42 U.S.C.§9601(20)(A)(iii).

[6] 15 Environmental L. Rep. 20992 (1985).

[7] 632 F.Supp 573 (1986).

they suggest that lenders have few, if any, options to protect their security interest without fear of becoming liable when loans are in default.

Environmental Problems do not have the Same Effect on All Financial Transactions

Environmental problems do not necessarily have the same effect on all financial transactions. Two variables are most important in determining how the problems will be considered in underwriting.

The first important variable is the structure of financing to be provided. Much of the lending for small or entrepreneurial businesses is done on a non-recourse basis, in which case the lender underwrites financing based on the assets being financed or the income generated from such assets. When this financing is provided, environmental problems can pose a greater credit risk than in lending when the lender has recourse because the value of the collateral can be impaired by the environmental problems.

Moreover, in providing non-recourse financing, lenders frequently receive an equity position in the borrower's venture. This practice reduces the annual price borrowers must pay for funds and thus allows them to devote a larger portion of their cash flow to productive endeavors. However, lenders could face an increased risk of liability for environmental cleanup under EPA's theory in Nicolet when they are involved as an equity participant.

The second variable affecting financing is the magnitude of the environmental problems in terms of the economic costs required to meet standards set under state or federal programs. Determining the magnitude of cost is difficult, however, since cost is a function of the extent and nature of contamination, the applicability of federal and state programs, the time over which cleanup will be undertaken, and the actual cleanup standards applied by the authorities.

Sometimes a detailed environmental investigation does not provide the information necessary to assess potential future costs with sufficient reliability for underwriting purposes. Indeed, it is not uncommon to see cost estimates for a particular remedial project vary by more than an order of magnitude. Thus, uncertainty itself may deter lenders from providing financing.

Lenders are Responding to Environmental Problems in Lending Decisions

Lenders are beginning to modify their lending practices in one or more of the following ways, as they become more aware of the significance of environmental problems in financing transactions.

1. The most common change is the requirement that an environmental audit be conducted in most industrial financing transactions, and in many other transactions such as those involving commercial real estate. The audit has several uses in the purchase of property and in making financing decisions. First, it provides lenders

with a basis for determining the environmental risk involved in a particular transaction. If the risk that could remain after mitigation measures have been taken appears to be unreasonable in comparison with a borrower's anticipated cash flow, the lender may decide not to finance the transaction. However, sometimes the risk mitigation measures themselves are sufficiently onerous to make the transaction infeasible.

Second, the audit provides the borrower with a defense against future cleanup obligations resulting from previous landowner practices. However, the so-called "innocent landowner" defense in Superfund[8/] requires so much investigation to establish the innocence of a new landowner that lenders cannot rely on the provision in underwriting the value of collateral in a transaction.

Third, the audit provides a basis for other contractual risk-sharing provisions which may be a part of the financing transaction.

2. The second change in lending practices is the requirement that outstanding environmental problems, which must be addressed pursuant to rules or settlement agreements, be funded from the proceeds of the financing provided. This requirement is usually applied along with a requirement that the cash flow of a particular project be sufficient to fund both the investment and the resolution of the known environmental problems. However, many projects will not generate sufficient revenue to

8/ 42 U.S.C.§9607(b)(3).

fund cleanup. Examples of environmental problems for which this step may be appropriate include removal of leaking underground storage tanks, and closure of RCRA treatment, storage or disposal facilities.

3. A third change in lending practices is the requirement that sellers indemnify the buyers of properties which are to be financed. This practice is becoming less common and less useful, however. Sellers are often now unwilling to assume a continuing contractual obligation to undertake remediation when they have no control over the buyer. Further, it is difficult to segregate contamination problems according to periods of facility ownership. Moreover, the value of an indemnification is often limited by the financial condition of the company providing the indemnification, and, usually, stronger companies are less willing to provide an indemnification than are weaker ones.

4. A final change in lender practices is the occasional requirement for remedial action as a condition of financing when remediation is not required by law. The most common case in point is the removal of asbestos from commercial buildings. While this is not a requirement in all commercial real estate transactions, lenders do frequently require that the borrower demonstrate the financial capacity to implement a management plan for buildings which contain asbestos. Such management plans may provide for the eventual removal of asbestos over the life of the financing.

Reducing the Impediments to Financing

Clearly, financing when environmental problems are present is most difficult for small businesses and for business which, while not classified as "small" as the term is defined by the Small Business Administration, may be entrepreneurial in nature or may involve more innovative technology. However, this problem is not unique to small companies. Larger companies, including those which can finance projects by publicly issuing stock or debt, or by using retained earnings, face the same complications and dilemmas when environmental problems are present. For these companies, however, the question is likely to be whether or not they should undertake the investment rather than whether or not financing is available.

As I mentioned earlier in my testimony, lending practices are changing in response to two real risks arising from RCRA and Superfund when financing properties which have environmental problems. These risks are the increased risk of borrower default due to the costs a borrower may face in meeting cleanup requirements, and the risk of lender liability. You have asked whether or not federal loan guarantees would mitigate these risks.

Guarantees for small business loans might reduce some of the risk associated with lending today, depending on how such a program was structured. However, such guarantees would presumably not be available for all businesses and entrepreneurs. Moreover, while a loan guarantee

program may be part of the solution to problems which are now encountered in financing certain projects and businesses, the merits of such a program should be compared with the merits of possible modifications to the environmental programs which can impede all transactions. Modifications which would facilitate financial transactions while continuing to provide for protection of health and the environment may include clarification of the "innocent landowner" and lender liability provisions in Superfund and extending the exemption to RCRA, and amendments to make it clear that the purpose of cleanup standards is to protect health and the environment, rather than to eliminate contamination which does not pose a real health or environmental risk.

To help you in considering legislation to provide guarantees for small business loans when environmental problems are present I encourage you to consider three issues which are likely to be of major concern to various parties.

1. <u>What must the borrower do to obtain a loan guarantee?</u>

If obtaining the loan guarantee required the financing of cleanup under existing and proposed standards, as well as the assets to be purchased, the cash flow of many projects is likely to be inadequate to retire the total debt.

2. Who is responsible for meeting environmental cleanup obligations if a borrower who has a loan guarantee defaults?

If the program were structured in such a way that the government took title to the property and compensated the lender for the outstanding debt, the government would then be presumably adding to the list of sites where cleanup is to be Superfund-financed. This would shift the cleanup burden for sites which received loan guarantees from the private parties to the public. Such a structure could also create a disincentive against cleanup on the part of companies which own or operate facilities with hazardous substances.

3. What businesses would be eligible for loan guarantees?

Businesses which are too large to meet the Small Business Administration's definition of "small business" can find financing as difficult to arrange because of environmental problems as businesses actually classified as "small businesses". The magnitude of environmental problems and the applicability of particular federal programs are more significant factors in determining whether financing is difficult than is company size.

Conclusion

I believe the problems that small businesses are beginning to encounter in obtaining financing because of environmental issues are the first indicators of a broader policy issue which needs to be considered.

Borrowers and lenders are looking much more carefully at environmental matters in making investments today. This is a positive effect of the environmental programs which have been put in place over the last 10 years. But this closer consideration is beginning to have a negative effect as well. These programs are beginning to increase the cost, reduce the supply, of capital which is available for industrial and some commercial transactions. This can deter individuals and businesses from investing in otherwise productive ventures.

The financial services industry can adapt to changes in the attractiveness of lending to different businesses. Indeed, this is done routinely. But if financing for otherwise productive industrial and even commercial ventures is hampered because of environmental problems complicated by the federal programs designed to fix such problems, society itself will experience adverse effects in the form of slower economic and jobs growth. I hope this broader consideration will be factored into your examination of the problems involved in financing small businesses. In particular, I hope you will consider amendments which would clarify the "innocent landowner" and lender liability provisions of Superfund and extend them to RCRA, and clarify the basis for the cleanup standards in these programs.

Thank you for the opportunity to appear before you today. I will be pleased to answer any questions you may have.

3735K

SBA U.S. Small Business Administration Washington, DC 20416

STATEMENT OF

BERT X. HAGGERTY

DISTRICT DIRECTOR

NEW YORK DISTRICT OFFICE

U.S. SMALL BUSINESS ADMINISTRATION

BEFORE THE

COMMITTEE ON SMALL BUSINESS

SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES

AND ENERGY

U. S. HOUSE OF REPRESENTATIVES

NEW YORK, N.Y.

May 15, 1989

Mr. Chairman and distinguished Members of this subcommittee, I am pleased to be present this morning to present the views of the Small Business Administration on this important topic.

SBA involvement in the hazardous waste issue has taken two forms. The first is our Pollution Control Bond Program, which we have operated since 1976. The second is our effort to avoid liability under our other loan programs which arises in the event we take title to real property through foreclosure on collateral which is found to have a hazardous substance problem.

The law in this area is rapidly evolving. There are a number of cases today in which lenders have been sued either for lack of due diligence in making loans or when they have inadvertently taken title to collateral which is subsequently found to have a hazardous waste problem. Lawyers go after potential defendants with the deepest pockets, and the Government is often a target of such actions.

As both a lender and a guarantor of loans made by private sector lenders, SBA must exercise due diligence to protect the taxpayer from having to inadvertently assume liability for the cost of a hazardous substance cleanup. Please understand: this is not an anti-environmental position on the part of the SBA. It is simply that our regular business loan programs should be administered in such a way as to avoid cost to the Government for hazardous substance clean up. It is only through making an error that SBA would find itself in such a position. Further, in exercising due diligence SBA helps protect the environment by not financing activities that would result in environmental damage.

There are other laws and programs that help protect the environment. One of these is SBA's pollution control program, providing financing for environmental protection costs incurred by small businesses. Congress has carefully designed this program so that it is a loan, not a grant. It is not a bailout. The borrower must show an ability to repay the loan. Thus the cost of protecting the environment becomes part of the cost of production, which is the way it should be if we are to have an efficient economy in which prices reflect the <u>real</u> cost of producing goods and services.

The subcommittee asked us to address certain issues, and I have organized my testimony around the questions.

> The committee's first question is whether small business has a special problem in obtaining capital to remedy environmental problems or to comply with environmental laws. Does the SBA have any statistics on small businesses approaching the agency for help in these matters, or on small business failures associated with environmental liabilities?

Small businesses are generally at a disadvantage in obtaining financing of all types in the commercial marketplace. It was in order to help small businesses comply with environmental laws that SBA's Pollution Control Financing Program was enacted back in 1976.

SBA has no way to track business failures resulting from environmental liabilities, nor does it have an existing means to gather statistics on such businesses approaching the Agency for help.

> 2. Does the SBA, in its assistance programs, discriminate, directly or indirectly, against small businesses with these problems? For example, would a small business trying to clean up a hazardous waste spill on its land have a harder time getting assistance because of the potentially large liabilities and low collateral value attached to its land? Is the SBA more cautious in giving financial assistance to a business that may have hidden liabilities because of past waste handling practices? Does the SBA take special care in rendering advice to a business operating a site with hazardous waste for fear of incurring liability for future clean-ups under Superfund?

You have asked whether SBA discriminates against small businesses that have these problems. While "discrimination" is not the correct term, an outstanding hazardous substance citation against a firm would certainly evoke a negative factor in a credit evaluation. It is doubtful that a lending program could be developed to provide such a funding source unless the extent of the contamination could be reliably established beforehand, and the borrower could establish the ability to repay, recognizing that such a loan would generate no income.

SBA is currently drafting policies and procedures which would require potential liability for environmental damage and/or clean-up to be considered in the loan making process. SBA's legislative mandate requires that reasonable assurance of repayment be present before financing is provided. Potential liability for environmental damages must be weighed with other credit factors in determining if repayment ability is present.

3. Does the SBA have any programs to assist small businesses having problems locating capital for these projects? Please describe the kinds of efforts the agency has made to help these businesses.

The SBA does have such a program. Under Section 404 of the Small Business Investment Act SBA has had authority since 1976 to guarantee pollution control bonds. The SBA must first determine that small businesses are or are likely to be at an operational or financing disadvantage with respect to the planning, design, or installation of pollution control facilities. "Pollution control facilities" means such property, both real and personal, as SBA in its discretion determines is likely to help prevent, reduce, abate, or control

noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes, or heat. In addition, funds may be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste.

Under this authority the SBA has guaranteed 268 pollution control bonds totalling $364 million.

Congress did not reauthorize this program for fiscal years 1989 and 1990, because of a lack of demand for financing in amounts that are feasible for bond financing. Instead, Congress amended the Small Business Act to make small businesses eligible to receive loan guarantees of up to one million dollars under Section 7(a) of the Small Business Act for the purposes just described. The limit to one firm under the previous program was five million dollars.

The new authority within the loan program may better fit the type of demand we have experienced: Only 4 bonds worth $5.2 million have been guaranteed in the last two years. Proposed regulations for the recently authorized loan program were published in the Federal Register on April 28. A copy is attached to my prepared testimony. The new program will become operational when final regulations are published this summer.

It is important to understand that these are loans, not grants. In order to be approved, an applicant must demonstrate an ability to repay this loan, which will not in itself produce any additional revenue for the firm. The loan proceeds are to be used for protecting the environment and not for plant, equipment or working capital to produce added income.

In the past the program has been used primarily for abatement, not to clean up waste that has already occurred. A major problem in waste cleanup is the open-ended nature of many cases: if the ultimate liability is unknown, a lender is not in a good position to decide if a borrower is a good credit risk.

4. One proposal to alleviate the difficulty of small businesses in getting environmental capital would create a federal loan guarantee program, administered by the Small Business Administration in cooperation with the Environmental Protection Agency. Can the SBA comment generally on this idea? Given SBA's experience in other loan guarantee programs, could you suggest what percentage of the loan the government would have to guarantee to effectively promote private lending? In other loan guarantee programs, what is the cost to the government relative to the amount of outside financing attracted? Can you see aspects of an environmental loan program that would make it more or less expensive than average to run?

The existing program authorizes SBA to guaranty up to 85% of loans to eligible small businesses (90% for loans of less than $155,000). Because of the third party liability posed by this type of lending, it is more likely the loans will be made for equipment and facilities to abate future pollution rather than for cleanup of existing contamination.

This issue will continue to be problematic as long as there is great uncertainty on the part of lenders and the SBA concerning their possible ultimate liability for environmental damage. To be successful, a loan program to provide this type of financing should require that the lender reach an

agreement with the Environmental Protection Agency, as well as with appropriate state and local agencies, regarding both the suitability of the project with respect to regulatory compliance and the lender's and SBA's liability that may result from financing a business with potential clean-up liability.

5. What other steps could you suggest to free capital for environmental remediation?

Since lenders will be reluctant to provide this type of financing as long as they see potential consequences for as yet undetermined environmental liability of a borrower, consideration may be given to some limited statutory relief for lenders under these circumstances. Such relief could also resolve a problem more basic to the credit decision in those cases which concern the value of property being offered as collateral by a borrower. We again recommend greater coordination and planning between EPA and the lending community prior to regulations being promulgated which may adversely affect commercial lending.

This concludes my prepared comments, Mr. Chairman. I would be pleased to respond if you have any questions.

13 CFR Part 122

Business Loans

AGENCY: Small Business Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590 (102 Stat. 2989), (the 1988 legislation), enacted November 3, 1988, authorizes the Small Business Administration (SBA) to guaranty loans up to $1,000,000 to eligible small concerns for financing pollution control facilities. This proposed regulation would implement this new authority under section 7(a) of the Small Business Act (15 U.S.C. 636(a)).

DATE: Comments must be submitted on or before May 30, 1989.

ADDRESS: Comments may be mailed to: Everett Shell, Small Business Administration, 1441 L Street, NW., Room 604, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Everett Shell, 202-653-6470.

SUPPLEMENTARY INFORMATION: For ten years, the Small Business Administration (SBA) has had the authority under the Small Business Investment Act of 1958 (15 U.S.C. 661-1) (SBI Act) to guaranty 100 percent of a loan to an eligible small concern to finance pollution control facilities. The 1988 legislation in effect revokes this program and, in lieu thereof, adds this authority to section 7(a) of the Small Business Act (15 U.S.C. 636(a)) while retaining the purpose for such lending as set forth in the SBI Act. There are several effects of this change. First, the amount of a loan that can be guaranteed under the new legislation cannot exceed $1,000,000. (Under the SBI Act, SBA could guarantee up to $5 million.) Second, the funding for the financing under the new legislation comes from the SBA business loan and investment fund applicable to section 7(a). (Under the SBI Act, there existed a separate revolving fund.) This means that other financing under section 7(a) to the small concern will reduce the SBA assistance available for pollution control financing. Third, the fees payable to SBA under the financing available in the SBI Act are eliminated. Instead, the borrower would be liable under section 7(a) for just the 2 percent guaranty fee chargeable for all section 7(a) loans.

Proposed § 122.58-1 would set forth the policy of Congress to authorize SBA to provide guaranteed loans to eligible small concerns for pollution control facilities.

Proposed § 122.58-2 would define a "pollution control facility" as set forth in the SBI Act. Thus, it would mean such property (both real and personal) which is likely to help prevent, reduce, abate or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes or heat, and such property (both real and personal) which would be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste, including any related resource recovery property when such recovery property is stated to be useful for pollution abatement by local, State or Federal environmental regulatory authority.

Proposed § 122.58-3 would require that the small concern meet the criteria generally applicable to section 7(a) borrowers: be independently owned and operated, not dominant in its field, and subject to the eligibility rules set forth in Part 120 of SBA regulations. Further, the size standards in Part 121 of SBA regulations applicable to section 7(a) borrowers generally would be applicable to borrowers under this program. The particular size standard in the regulations presently which applied under the SBI Act authority would not be applicable under this new authority since Congress clearly intended to apply the section 7(a) rules and criteria to this program.

Proposed § 122.58-4 would state that the amount that can be guaranteed under this program cannot exceed $1,000,000 which is an expressed statutory exception to the $750,000 applicable to section 7(a) borrowers generally. The proposed section would also ensure that a borrower who has obtained other Section 7(a) financing first will be eligible for pollution control financing up to a limit of $1,000,000 less the amount of previous outstanding SBA section 7(a) financing.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule will not, if promulgated in final form, have a significant impact on a substantial number of small entities. This is because, in recent years, when higher

guaranty financing has been available, fewer pollution control applications have been submitted to SBA. SBA anticipates even fewer applications under the lower financing maximum proposed here.

For the same reason, SBA certifies that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of $100 million or more.

The proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 122

Loan programs/Business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA hereby proposes to amend Part 122, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 122—[AMENDED]

1. The authority citation for Part 122 is the same:

Authority: 15 U.S.C. 634(b)(6) and 636(a)

2. New §§ 122.58 through 122.58–4 would be added to read as follows:

§ 122.58 Pollution Control Program.

§ 122.58–1 Policy.

The Act authorizes SBA to guaranty loans to assist a small concern to finance the planning, design, or installation of a pollution control facility. No direct financing by SBA is authorized.

§ 122.58–2 Pollution control facility.

A "pollution control facility" means such property (both real and personal) which is likely to help prevent, reduce, abate, or control noise, air or water pollution or contamination by removing, altering, disposing or storing pollutants, contaminants, wastes or heat, and such property (both real and personal) which will be used for the collection, storage, treatment, utilization, processing, or final disposal of solid or liquid waste, including any related resource recovery property when such recovery property is stated to be useful for pollution abatement by a local, State or Federal environmental regulatory authority.

§ 122.58–3 Eligibility.

In order to be eligible for a guarantee for a pollution control facility, the small concern must:

(a) Be independently owned and operated and not dominant in its field;

(b) Be eligible under SBA loan policy as set forth in Part 120 of this Title; and

(c) Together with its affiliates (as defined in § 122.3–2(a)) qualify as a small business as defined for section 7(a) borrowers generally in Part 121 of this Title. The provisions of § 121.4(f) of this Title expressly do not apply to loans guaranteed in this section.

§ 122.58–4 Amount.

The guaranty by SBA shall not exceed $1,000,000 for financing a pollution control facility. The aggregate amount of $1,000,000 available from the business loan and investment fund under this section shall be reduced by any other financing from SBA pursuant to section 7(a) of the Small Business Act.

Dated: February 27, 1990.

James Abdnor,

Administrator.

[FR Doc. 90–10179 Filed 4–27–90; 8:45 am]

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STATEMENT OF
KAREN V. BROWN
SMALL BUSINESS OMBUDSMAN
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES AND ENERGY
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES
(THE BRONX, NEW YORK)

MAY 15, 1989

Thank you Mr. Chairman, I appreciate the opportunity to present these remarks to the Subcommittee today. I am the Small Business Ombudsman for the Environmental Protection Agency. The Ombudsman is appointed by the Administrator and located in the Office of Small and Disadvantaged Business Utilization, which is a part of the Administrator's Executive Office. My function is to serve as the Agency's advocate for small business, across the board, on all issues other than contracting and procurements. Essentially, I am concerned with regulatory issues that may impact upon small businesses.

Considering the fact that at any given time there are more than 250 regulatory actions going through EPA's rulemaking pipeline, it is more than a full-time job keeping track of those actions having significant impact on small businesses. Based on preliminary determinations, we select 25 to 30 regulations to monitor closely and participate in the regulatory working groups. During the "Reg Building" process, our office makes suggestions to the work groups and provides information on small business concerns and problems that may be experienced by certain business entities. In many cases we serve as the small business

community's official pipeline to the Agency's regulation writers. As the proposed regulation evolves through the review process, we continue to serve as an advocate and spokesman for small business. Needless to say, we win some, lose some and compromise on many. As you all understand, EPA is foremost an environmental regulatory agency. However, I am happy to say we have made a difference, a big difference, in the way our agency's program managers view the problems of small businesses--both pre- and post-regulatory action.

This brings me to my other important function--helping small businesses comply with environmental regulations once they are implemented. With EPA's regulatory umbrella now extending over hundreds of thousands of small businesses, many of them "main street" type businesses, voluntary compliance is a necessity. An aggressive outreach program is needed to advise and inform small businesses of new environmental requirements and, if necessary, how to comply.

Our outreach efforts have been extremely successful over the years, and we like to feel that, as a result of these efforts, thousands of small businesses subject to EPA's regulations are now complying, or attempting to comply, with environmental requirements. To reach the maximum number of small businesses, we operate a toll-free Small Business Hotline to answer questions and provide guidance on EPA's regulations, requirements, etc. At present, we handle around 1,000 to 1,200 hotline calls per month.

Keep in mind these aren't recorded answers we provide; we (four of us) deal with the individual problems of each caller. Additionally, we prepare a quarterly update on the status of all the major regulatory actions affecting small businesses and mail it to over 6,000 small business associations, organizations or groups. We also meet frequently with small business trade associations, and I personally speak to at least 25 to 30 associations or organizations during the year. We disseminate hundreds of thousands of publications to assist small firms and advise them of where to get help from other sources, which finally brings me to the immediate concern of this Committee: the need for pollution control and compliance financing in the small business sector.

EPA has conducted at least three studies that confirm that small businesses (some more than others) have financing needs in order to comply with environmental regulations. An initial study in 1983 conducted by ICF Incorporated for the Small Business Ombudsman titled "An Estimate of Small Business Financing Needs To Comply With EPA Regulations" did exactly that. This early study made a first-cut estimate that at least $240 million in capital requirements, possibly much more, would be needed for small business compliance with EPA's effluent guidelines, New Source Performance Standards (NSPS), and Resource Conservation and Recovery Act (RCRA) regulations and other regulations under development at the time. Please note that this predates more

stringent RCRA regulations and the full implementation of CERCLA which could significantly increase this figure.

A second study in 1986, conducted by Lee Wan and Associates, Inc., again for the Small Business Ombudsman and titled "Evaluating The Need For An SBA Pollution Control Financing Program" also argues that a program is needed, and that the current program of the Small Business Administration should be strengthened and expanded and better advertised to the potential users. I commend this study to you as it deals more directly with the more current and more stringent environmental regulations that the small business community is facing.

The third study, referred to within EPA as the Sector Studies, examined the problems of small communities, small businesses and agriculture in complying with multiple environmental regulations. These studies were conducted by the Office of Policy, Planning and Evaluation (OPPE) and completed in September of 1988. In particular, this Committee should find the information and conclusions of the Small Business Sector portion of this study of significant interest. In brief, the study found that in eight out of the nine industries studied, certain firms could experience financial difficulties in meeting the regulations. These eight industries are: electroplating, wood preserving, pesticide formulating and packaging, farm supply stores (agribusinesses), interstate trucking, gasoline service stations, dry cleaners and small water supply companies. Of

those studied, the only industry not found to be significantly impacted was the photo-finishing business. Again, I recommend the Small Business Sector Study for your further review and consideration.

As you no doubt have already assumed, the Small Business Ombudsman's staff made substantial input into all of these studies. Our day-to-day involvement with small business issues and problems makes us keenly aware of the concerns and needs of the small business community. We receive requests almost daily for our pollution control financing assistance information package which sets forth, in some detail, several sources of funding for these needs. Unfortunately, some of the information in the package is outdated and needs revision.

However, probably of equal importance is the need for the SBA to increase awareness of its ongoing "bread and butter" program known as the 7(A) Business Loan Program, which can provide direct loans or loan guarantees that may be used for pollution control financing. Direct loans of up to $150,000 are authorized and guarantees of up to 90% of the total loan or $500,000, whichever is less.

We have found the 7(A) program to be more compatible with the needs of the small businesses in need of capital for environmental compliance. For the most part, these would be gasoline service station owners in need of capital to replace tanks and piping and for small dry cleaners who may need to

install new cleaning equipment that minimizes the evaporation of perchloroethylene or converts the cleaning process to alternative petroleum-based solvents. It is quite likely that small pesticide formulators and wood preservers would also avail themselves to this source of capital to come into compliance with present and future regulations. Although we are aware of a number of small businesses faced with remediation of hazardous waste problems these are not frequent occurrences at this point.

In summation, our office deals with many thousands of small businesses who are experiencing a wide variety of compliance problems. I can assure you, however, that the will and desire of small business to comply with environmental requirements is almost universal. The environmental ethic, like the work ethic, is built into the small business community's way of life. In most cases, all they need is information and advice on what is expected and how to do it. They do sometimes need extra assistance, such as information we provide through the Hotline and quarterly updates, and the SBA's 7(A) program, to enable them to stay in business and comply with environmental regulations.

That concludes my testimony, Mr. Chairman. I have made copies of the studies referred to in my testimony available to your staff. Again I thank you for the opportunity to make our views known here today, and I will attempt to answer any questions you may have.

* * *

TESTIMONY FOR CONGRESSIONAL FIELD HEARING
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES
AND ENERGY

"ACCESS TO CAPITAL FOR SMALL BUSINESSES
WITH TOXIC WASTE SITE PROBLEMS"

MONDAY, MAY 15, 1989
BRONX, NEW YORK

I. INTRODUCTION

GOOD MORNING AND THANK YOU CONGRESSMAN WYDEN (CHAIRMAN), CONGRESSMAN ENGEL (D-BRONX), AND OTHERS FOR PROVIDING THE OPPORTUNITY TO ADDRESS THIS IMPORTANT TOPIC.

I AM EDWARD O. SULLIVAN, DEPUTY COMMISSIONER, OFFICE OF ENVIRONMENTAL REMEDIATION, NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION. BEFORE ASSUMING MY CURRENT ROLE, I WORKED AT A LARGE FINANCIAL INSTITUTION AS A LENDER AND INVESTMENT BANKER WORKING WITH BUSINESSES OF VARIOUS SIZES DEVELOPING CASH-FLOW SECURED BUSINESSES AND PROJECTS. THUS, I BELIEVE I AM AWARE OF THE PROBLEMS FACED BY LENDERS, BUSINESSMEN, AS WELL AS REGULATORS IN DEALING WITH THE COMPLEX ISSUES SURROUNDING HAZARDOUS WASTE SITES.

IN MY PRESENT CAPACITY I AM RESPONSIBLE FOR THE STATE'S INACTIVE HAZARDOUS WASTE SITE REMEDIAL PROGRAM (STATE

SUPERFUND). THE GOAL OF THE REMEDIAL PROGRAM IS TO INVESTIGATE AND, WHERE APPROPRIATE, EFFECT THE CLEANUP OF THE APPROXIMATELY 1,091 INACTIVE SITES PRESENTLY LISTED ON OUR REGISTRY OF KNOWN OR SUSPECTED HAZARDOUS WASTE SITES IN NEW YORK STATE.

BANKRUPTCY OF A SMALL BUSINESS RESPONSIBLE FOR A SITE IS NEITHER A DESIRABLE OR - TO MY KNOWLEDGE - FREQUENT DIRECT RESULT OF OUR PROGRAM, THOUGH I HAVE NO FIGURES ON THIS. OUR GOAL IS TO WORK WITH RESPONSIBLE PARTIES TO FIND AN EQUITABLE WAY TO PROPERLY REMEDIATE SITES, AND WE WOULD WELCOME ANY MECHANISM OR PROGRAM THAT WOULD KEEP RESPONSIBLE PARTIES VIABLE BEFORE, DURING AND AFTER THEY HAVE PARTICIPATED IN THE CLEANUP OF A SITE.

II. OPERATION OF THE INACTIVE HAZARDOUS WASTE SITE REMEDIAL PROGRAM (THE "PROGRAM")

THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION (DEC), WITH THE COOPERATION AND ASSISTANCE OF THE STATE DEPARTMENT OF LAW, ATTORNEY GENERAL'S OFFICE, AND THE DEPARTMENT OF HEALTH, HAS INITIATED A MAJOR EFFORT TO LOCATE AND IDENTIFY KNOWN OR POTENTIAL SITES, INVESTIGATE THESE SITES AND WORK WITH THE PARTIES RESPONSIBLE FOR SITE CONTAMINATION TO ENSURE THE PROPER REMEDIATION OF THESE SITES. APPROXIMATELY 70 SITES ARE

ALSO LISTED ON THE NATIONAL PRIORITIES LIST, AND WE WORK ON THESE IN CONJUNCTION WITH THE FEDERAL GOVERNMENT. SITES OCCUR IN ALL PARTS OF THE STATE AND POSE VARYING DEGREES OF ENVIRONMENTAL THREAT OR PUBLIC HEALTH RISK. THEY ARE OWNED AND/OR OPERATED BY PRIVATE INDIVIDUALS, SMALL AND LARGE BUSINESSES AND ALL LEVELS OF GOVERNMENT - OR ANY COMBINATION OF THESE OWNERS.

ONCE A SUSPECTED SITE IS DISCOVERED IT IS INVESTIGATED IN ORDER TO CONFIRM THE PRESENCE OF HAZARDOUS WASTE, DETERMINE THE TYPE AND DEGREE OF CONTAMINATION, AND TO COLLECT DATA WHICH WILL HELP ESTABLISH THE DEGREE OF THREAT POSED BY THE SITE. SITES ARE PLACED ON THE "REGISTRY," OR LISTING OF KNOWN OR SUSPECTED INACTIVE HAZARDOUS WASTE SITES TO ALERT THE PUBLIC OF THE POTENTIAL OR KNOWN THREAT AND TO BRING THE SITE WITHIN THE STATUTORY AND PROGRAMMATIC SCOPE OF OUR REMEDIAL PROGRAM.

THE PROGRAM THEN USES A PRIORITIZATION SYSTEM TO ALLOCATE LIMITED FISCAL RESOURCES AND PERSONNEL TO THE REMEDIATION OF SITES. THE SITES ARE RANKED ACCORDING TO THE RISK OF ENDANGERMENT TO PUBLIC HEALTH AND THE ENVIRONMENT WITH THE SITES POSING A GREATER RISK RECEIVING MORE IMMEDIATE ATTENTION AND RESOURCES.

THE NEXT STEP IS TO UNDERTAKE ENFORCEMENT ACTIONS WHICH IDENTIFY AND INITIATE A DIALOGUE WITH THE POTENTIALLY RESPONSIBLE PARTIES (PRPS) AIMED AT GAINING THEIR ACTIVE PARTICIPATION IN THE INVESTIGATION AND CLEANUP. THIS PROCESS IS TYPICALLY CONDUCTED BY THE DIVISION OF ENVIRONMENTAL ENFORCEMENT AT DEC OR THE AG'S OFFICE BUT MAY INVOLVE FEDERAL ENFORCEMENT AGENCIES. THE GOAL IS TO NEGOTIATE AN ORDER ON CONSENT WHICH DETAILS THE PRP'S LIABILITIES AND RESPONSIBILITIES AND OUTLINES THE METHOD FOR DEVELOPING A REMEDIAL PROGRAM FOR THE SITE. STATE LAW REQUIRES THAT WE PURSUE ANY PRPS IDENTIFIED WITH THE SITE FOR DAMAGES OR PARTICIPATION IN THE SITE REMEDIATION PROGRAM. IN SOME CASES, THE SITE OWNER/OPERATOR IS NOT LOCATED, IS (ALREADY) BANKRUPT OR UNABLE OR UNWILLING TO UNDERTAKE THE REMEDIAL PROGRAM DUE TO LIMITED RESOURCES OR OTHER FACTORS. THE STATE WILL THEN CAUSE THE REMEDIATION TO OCCUR FUNDED BY STATE SUPERFUND OR FUNDS FROM THE $1.2 BILLION ENVIRONMENTAL QUALITY BOND ACT, WHICH WAS AUTHORIZED BY THE LEGISLATURE, GOVERNOR AND PEOPLE OF NEW YORK IN 1986.

SUBSEQUENT TO CLEANUP ACTION, WE WILL ATTEMPT TO RECOVER OUR EXPENDITURES FROM RESPONSIBLE PARTIES. WHILE WE CONSIDER ALL RESPONSIBLE PARTIES POTENTIAL TARGETS FOR SUCH COST RECOVERY ACTIONS, THE VIABILITY OF PARTIES MAY BE A FACTOR IN THE DEPARTMENT'S OR

ATTORNEY GENERAL'S EXERCISE OF PROSECUTORIAL DISCRETION IN DETERMINING WHETHER TO PURSUE ACTION AGAINST A PARTICULAR BUSINESS.

THE REMEDIAL ACTION ULTIMATELY UNDERTAKEN IS OVERSEEN BY DEC, WHETHER PERFORMED BY THE PRP OR STATE CONTRACTORS, AND MUST BE APPROVED BY DEC AND THE DEPARTMENT OF HEALTH WHEN COMPLETED. LONG-TERM MONITORING OF THE SITE BY EITHER THE STATE OR THE RESPONSIBLE PARTY ENSURES THAT THE REMEDY WAS AND CONTINUES TO BE EFFECTIVE AND MAY ULTIMATELY ALLOW REMOVAL OF THE SITE FROM THE REGISTRY ("DELISTING") AND USE FOR PRODUCTIVE PURPOSES, INCLUDING COMMERCIAL OPERATION. SITES MAY STILL BE USEABLE FOR CERTAIN ACTIVITIES, EVEN IF THEY ARE ON THE REGISTRY, AS I WILL DISCUSS LATER.

AS I HAVE NOTED, WE ARE REQUIRED BY LAW TO LOCATE AND COMPEL CLEANUP BY PRPS. IF THEY ARE UNWILLING TO PARTICIPATE, WE ARE FURTHER REQUIRED TO SEEK REIMBURSEMENT OF REMEDIAL COSTS WHILE UNDERTAKING THE CLEANUP OURSELVES. WHILE OUR JOB WOULD BE EASIER IF WE SOUGHT FUNDING FROM THE DEEPEST POCKET OR POCKETS AVAILABLE, AND WHILE ALL PARTIES ARE CONSIDERED JOINTLY AND SEVERALLY LIABLE FOR A SITE TO WHICH THEY HAVE CONTRIBUTED, WE ATTEMPT TO ACHIEVE EQUITY IN OUR MULTI-PARTY SETTLEMENTS, APPORTIONING LIABILITY

ACCORDING TO CONTRIBUTION TO THE EXTENT IT CAN BE DETERMINED. IN MOST CASES, WE LEAVE THE RESPONSIBILITY FOR APPORTIONING RISK TO THE RESPONSIBLE PARTIES THEMSELVES. IN ANY CASE OUR GOALS IS TO ACHIEVE THE CLEANUP AND RECOVER TAXPAYER'S DOLLARS, NOT TO PUSH SMALL BUSINESSES INTO BANKRUPTCY, THOUGH THIS ADMITTEDLY COULD THEORETICALLY RESULT FROM OUR ACTION. I AM AWARE OF SITUATIONS IN WHICH A COMPANY'S ASSOCIATION WITH A HAZARDOUS WASTE SITE HAS DAMAGED ITS RELATIONS WITH LENDERS OR LIMITED ITS ACCESS TO CREDIT EITHER FOR REMEDIAL ACTIVITIES OR OTHER GENERAL BUSINESS PURPOSES. AND I WOULD SUPPORT ANY FEDERAL PROGRAM WHICH WOULD ALLEVIATE SUCH PROBLEMS FOR BUSINESSES.

III. Policy Issues

A. Permanent Remedies

THE PRESENCE OF AN INACTIVE HAZARDOUS WASTE SITE NEED NOT PRESENT A PERMANENT AND INSURMOUNTABLE OBSTACLE TO FUTURE PRODUCTIVE USE OF THE SITE NOR PRESENT A FINANCIALLY FATAL BURDEN TO THE RESPONSIBLE PARTY, PARTICULARLY A COOPERATIVE ONE. DEC'S GOAL IS TO ADDRESS THE SITE IN A MANNER THAT WILL ALLOW FUTURE DEVELOPMENT AND USE OF A SITE.

UNDER COMMISSIONER JORLING'S LEADERSHIP, AND CONSISTENT WITH FEDERAL LAW, WE HAVE PURSUED A POLICY AIMED AT IMPLEMENTING PERMANENT REMEDIES AT SITES, WHEREVER POSSIBLE. SUCH PERMANENT REMEDIES SUCH AS THERMAL DESTRUCTION OF WASTES WILL ALLOW FUTURE USE, AS OPPOSED TO CONTAINMENT ORIENTED REMEDIES WHICH WILL INVOLVE LONG-TERM TECHNICAL AND FINANCIAL BURDENS. WHILE SUCH REMEDIES MAY BE MORE COSTLY IN THE SHORT RUN, WE BELIEVE THEY WILL BE MORE BENEFICIAL TO CURRENT AND FUTURE OWNERS OF THE SITE AND TO SOCIETY AT LARGE.

FINANCIAL INSTITUTIONS SHOULD TAKE NOTE OF THE IMPACT OF THIS POLICY ON THE VALUE OF LAND WHICH CURRENTLY INCLUDES A HAZARDOUS WASTE SITE AND NOT ABANDON AN OWNER JUST BECAUSE THE SITE CURRENTLY REQUIRES REMEDIATION.

B. DEFINITION OF SITE: SIZE AND EXTENT OF CONTAMINATION

SOME SITES MAY HAVE EXTENSIVE CONTAMINATION THAT WILL RENDER THEM TOTALLY UNUSABLE AND HAZARDOUS, WHILE CONTAMINATION MAY BE QUITE LOCALIZED IN OTHERS.

IN A CASE ON LONG ISLAND THE PRP/OWNER WANTED TO DEVELOP A SITE OF RELATIVELY LARGE ACREAGE BUT WAS PREVENTED FROM PROCEEDING BECAUSE THE PROPERTY WAS CONTAMINATED AND WAS LISTED ON THE REGISTRY. IN THIS CASE, THE EXTENT OF CONTAMINATION WAS LIMITED TO SOME CONCENTRATED AREAS AND THE BALANCE OF THE SITE WAS FOUND TO BE FREE OF CONTAMINATION. WHEN WE LEARNED OF THIS AND BECAME FAMILIAR WITH THE SPECIFIC CHARACTERISTICS OF THE SITE AND THE GOALS OF THE OWNER, WE REDEFINED THE SITE BOUNDARIES TO INCLUDE ONLY THOSE CONTAMINATED AREAS.THE REMAINDER OF THE AREA BECAME AVAILABLE TO THE OWNER FOR DEVELOPMENT.

THUS, FINANCIAL INSTITUTIONS SHOULD LOOK CLOSELY AT THE DETAILS OF A LISTING AND ASSESS THE TRUE LEVEL OF IMPAIRMENT TO ECONOMIC VALUE POSED BY A SITE.

C. VOLUNTARY CLEANUPS

THERE ARE NUMEROUS CASES WHERE BUSINESSES, CORPORATIONS OR INVESTMENT GROUPS HAVE PURCHASED PROPERTY KNOWN TO BE LISTED SITES BUT WITH THE BELIEF THAT THE PRESENT AND FUTURE (DEVELOPED) VALUE OF THE SITE WAS WORTH THE COST OF REMEDIATION AND THE LIABILITY RISK. IN THESE

CASES THE OWNERS REQUESTED AGENCY ACTION, PUSHED TO NEGOTIATE AND SIGN A CONSENT ORDER AND WERE ANXIOUS TO UNDERTAKE AND COMPLETE ANY REQUIRED REMEDIAL ACTION NECESSARY TO HAVE THE SITES REMOVED FROM THE REGISTRY OR RECLASSIFIED.

THE PROGRAM TRIES TO BE RESPONSIVE TO SUCH COOPERATIVE EFFORTS BUT WILL NOT COMPROMISE ON THE PROPER REMEDIATION OF THE SITE DUE TO PRESSING PRESENT OR FUTURE BUSINESS INTERESTS. WE MAY BE ABLE TO IMPROVE THE PRIORITY RANKING OF THE SITE OR COMPRESS THE ADMINISTRATIVE PORTION OF THE SCHEDULE BUT CAN NOT LIMIT THE REMEDIAL PROGRAM FOR A SITE.

D. APPORTIONED LIABILITY

IN SOME CASES A SITE IS PURCHASED OR THE BUSINESS OWNING THE SITE IS TAKEN OVER, EITHER WITH OR WITHOUT KNOWLEDGE OF THE CONTAMINATION PROBLEM. IN OTHER CASES, MULTIPLE PARTIES MAY HAVE CONTRIBUTED WASTE TO A SITE. THE NEW/PRESENT OWNER MAY BE WILLING TO PURSUE REMEDIATION EVEN THOUGH ITS LIABILITY MAY BE SHARED WITH THE PREVIOUS OWNER/OPERATOR(S). WHILE IN MANY CASES WE ALLOW RESPONSIBLE PARTIES TO ALLOCATE LIABILITY AMONG THEMSELVES, WE DO HAVE THE AUTHORITY TO

DISCUSS THE REMEDIAL RESPONSIBILITIES WITH THE PRPs, ATTEMPT TO DEFINE EACH PARTY'S ROLE AND, THROUGH NEGOTIATION, ALLOCATE LIABILITY AND REMEDIAL COSTS TO EACH PRP. IN THIS WAY, THE REMEDIAL ACTIVITIES MAY BE STARTED SOONER. IF EACH OWNER/PRP WILLINGLY ASSUMES ITS SHARE OF LIABILITY, THE SITE WILL BE ADEQUATELY REMEDIATED AND CAN BE MORE QUICKLY RETURNED TO PRODUCTIVE USE.

THESE COOPERATIVE APPROACHES ARE BENEFICIAL TO ALL PARTIES. WE CAN LOOK FORWARD TO COMPLETE REMEDIATION OF THE SITE BUT MORE IMPORTANTLY A BUSINESS COOPERATING WITH THE AGENCY CAN BETTER INFLUENCE THE REMEDIAL PROCESS. COSTS OF LITIGATION ARE REDUCED OR AVOIDED; THE PRP CAN BETTER CONTROL/INFLUENCE THE THE CONSULTANTS AND CONTRACTORS UNDERTAKING THE REMEDIAL WORK AND ASSOCIATED REMEDIAL COSTS.

E. PRIORITIZATION FOR ECONOMIC DEVELOPMENT

THE DEPARTMENT'S FIRST PRIORITY IS TO ADDRESS SITES WITH THE GREATEST ENVIRONMENTAL OR PUBLIC HEALTH RISK. THE DEC IS CONSIDERING METHODS BY WHICH WE COULD ATTEMPT TO PROVIDE FAVORABLE SHIFTS IN PRIORITIZATION, WITHIN A CLASS CATEGORY, OF

SITES WHICH ARE SITUATED IN DESIGNATED STATE ECONOMIC DEVELOPMENT ZONES. AS NOTED, WE FREQUENTLY RECEIVE PRESSURE FROM DEVELOPERS OR PRIVATE PARTIES WHO WISH TO ACCELERATE CLEANUP AT SITES TARGETED FOR DEVELOPMENT AND WE ARE ATTEMPTING TO DEVELOP POLICIES TO ADDRESS SUCH SITUATIONS.

PROSPECTIVE DEVELOPERS, LENDERS AND INVESTMENT GROUPS FREQUENTLY REQUEST INFORMATION ABOUT AN AREA IN AN EFFORT TO DETERMINE THE EXISTENCE OF A SITE(S). WE PROVIDE A LISTING OF KNOWN SITES BUT NEW SITES ARE FREQUENTLY DISCOVERED AS DEVELOPMENT WORK IS STARTED OR PRELIMINARY INVESTIGATIONS ARE UNDERTAKEN TO SATISFY LENDERS.

I SHOULD NOTE HERE THAT IT IS CRITICAL THAT PROSPECTIVE DEVELOPERS WHO DISCOVER NEW SITES WITH CONTAMINATION ALSO WORK WITH US. IF A NEW SITE IS DISCOVERED, BY LAW IT MUST BE LISTED AND INVESTIGATED/REMEDIATED. WE HAVE LEGAL REQUIREMENTS CONTROLLING HOW WE UNDERTAKE THESE ACTIONS AND THEY MAY APPEAR TIME CONSUMING AND CUMBERSOME, BUT, AS I SAID BEFORE, WE CAN NOT COMPROMISE THE TECHNICAL ASPECTS OF SITE REMEDIATION.

IT IS ALSO IMPORTANT TO RECOGNIZE OUR OTHER LIMITS. THE AGENCY GETS HUNDREDS OF REQUESTS ANNUALLY FOR INFORMATION ABOUT SPECIFIC SITES. FINANCIAL INSTITUTIONS, REALTORS AND INVESTMENT GROUPS WANT INFORMATION FROM DEC BUT THIS IS HIGHLY PROBLEMATIC BECAUSE OF THE NUMBER OF REQUESTS AND VALUE OF INFORMATION INVOLVED. WE ARE NOT CONSULTANTS AND SIMPLY DO NOT HAVE THE STAFF TO QUICKLY RESPOND TO INFORMATIONAL NEEDS. FURTHER, SOME PROSPECTIVE OWNERS/DEVELOPERS REQUIRE ENVIRONMENTAL AUDITS OR INVESTIGATIONS OF THE SITES WHICH GENERATE REPORTS. OFTEN THIS PROCESS TURNS UP A POTENTIAL SITE WHICH MUST BE REPORTED TO THE DEPARTMENT. WE ACT ON THIS INFORMATION AS QUICKLY AS WE CAN BUT REVIEW AND APPROVAL OF THESE REPORTS IS NOT MANDATED AND IS OFTEN DIFFICULT TO COMPLETE ON YOUR SCHEDULES.

IV. QUESTIONS OF CHAIRMAN/ LENDER'S FEARS

ALTHOUGH THE CHAIRMAN POSED A NUMBER OF EXCELLENT QUESTIONS IN HIS MEMO/TELEX (OF MAY 4) MOST OF THE INFORMATION SOUGHT IS THE KIND THAT OTHER AGENCIES MAY KEEP BUT DEC DOES NOT (EG: NUMBER OF BANKRUPTCIES BY PRPS; INDUSTRIAL REVENUE BOND RISK EXPOSURE: ACCESS-TO-CAPITAL ASSISTANCE PROGRAMS).

I CAN, HOWEVER, DISCUSS SOME FACTORS WHICH MAY MITIGATE SOME OF LENDERS' CONCERNS.

A. BANKS/LENDERS DON'T TEND TO LOOK CLOSELY ENOUGH AT THE DETAILS OF A SITUATION. IF YOU OWN PROPERTY "LISTED" ON THE REGISTRY IT MAY OR MAY NOT BE HAZARDOUS, MAY ONLY BE SUSPECTED OF CONTAINING HAZARDOUS WASTE, OR MAY HAVE ALREADY BEEN REMEDIATED. CREDITORS NEED TO BE MADE AWARE OF THE VARIOUS DEGREES OF CONTAMINATION AND RISK INVOLVED. WE ARE WILLING TO WORK WITH SUCH CREDITORS AND PROVIDE AS MUCH INFORMATION AS POSSIBLE GIVEN OUR RESOURCE CONSTRAINTS.

B. MANY OF THE SITES ADMITTED TO THE LIST EARLY IN THE PROGRAM WERE RECOMMENDED BY MUNICIPALITIES, INDIVIDUALS, OTHERS UNDER A COMMUNITY RIGHT TO KNOW PROGRAM WHICH DID NOT GIVE ADEQUATE SPECIFICITY ABOUT THE CERTAINTY OF A HISTORY OF HAZARDS AT THE SITE. AS A RESULT, MANY HAVE PROVED TO BE FALSE LEADS, HAVE BEEN DELISTED AND THEREFORE, THE SITE OWNERS HAVE NO LIABILITY.

C. IF A SITE DOES INDEED HAVE SOME SORT OF CONTAMINATION IT IS POSSIBLE THAT IT MAY BE EASILY AND INEXPENSIVELY CORRECTED. THE EXISTENCE OF A

SITE DOES NOT NECESSARILY MEAN A LARGE AND EXPENSIVE REMEDIAL ACTION AND LIABILITY EXPOSURE.

D. OUR REMEDIAL WORKLOAD IS PRIORITIZED. AN UNDERSTANDING OF OUR PROCESS AND CRITERIA FOR ACTION WOULD HELP. WE ARE HOLDING WITHIN THE NEXT MONTH MEETINGS AROUND THE STATE ON OUR PRIORITY RANKING SYSTEM AND WOULD ENCOURAGE FINANCIAL INSTITUTIONS TO ATTEND.

V. CONCLUSION

NOTWITHSTANDING ALL OF THE BRIGHTER SIDES OF THIS ADMITTEDLY DIFFICULT PROBLEM, SOME SITES DO REQUIRE MULTI-MILLION DOLLAR CLEANUPS AND YEARS TO FULLY INVESTIGATE AND REMEDIATE. THIS IS THE BLACK HOLE WHICH DRIVES MOST CREDITORS AWAY FROM SITES FOR GOOD REASON.

THIS IS AN AREA WHERE A FEDERAL ROLE IS APPROPRIATE, AND I BELIEVE THE SMALL BUSINESS ADMINISTRATION IS THE TYPE OF AGENCY BEST QUALIFIED AND EQUIPPED TO PLAY SUCH A ROLE. WHILE OUR ROLE AND THAT OF THE FEDERAL ENVIRONMENTAL PROTECTION AGENCY SHOULD FOCUS ON DILIGENTLY PURSUING, DIRECTING, AND OVERSEEING CLEANUP ACTIVITIES FROM A TECHNICAL PERSPECTIVE, WE WOULD ENTHUSIASTICALLY SUPPORT A PROGRAM AIMED AT KEEPING OUR

RESPONSIBLE PARTIES VIABLE TO PERFORM CLEANUPS, TO MONITOR SITES AFTER REMEDIATION, AND IDEALLY TO ENJOY AND BENEFIT FROM THE FRUITS OF THEIR REMEDIAL ACTIONS.

FEDERAL CAPITALIZATION OF A REVOLVING LOAN FUND FOR SMALL BUSINESSES FACING REMEDIAL COSTS COULD BE BENEFICIAL IN ADVANCING THE CAUSE OF REMEDIATION WITHOUT DEALING A FATAL BLOW TO THE BUSINESSES INVOLVED. OR CREDIT GUARANTEES BY THE SMALL BUSINESS ADMINISTRATION COULD PREVENT CREDITORS FROM WALKING AWAY FROM LONG-STANDING AND OTHERWISE CREDIT WORTHY CLIENTS.

I APPLAUD YOUR ATTENTION TO THIS PROBLEM AND AM CONFIDENT THAT NEW YORK STATE WOULD BE HAPPY TO WORK WITH THE FRAMERS OF APPROPRIATE LEGISLATION TO MEET THE NEEDS OF BUSINESSES GRAPPLING WITH THE FINANCIAL AND TECHNICAL LIABILITY ASSOCIATED WITH HAZARDOUS WASTE SITES.

AT THIS TIME I WOULD BE HAPPY TO ANSWER ANY QUESTIONS YOU MIGHT HAVE OR ATTEMPT TO ADDRESS OTHER ISSUES OF INTEREST TO YOU.

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August 1, 1989

Congressman Skelton
2134 Rayburn House Office Building
Washington, D. C.

RE: HR 2085

Dear Ike:

I have talked to you about Congressman LaFalce's effort to protect financial institutions that may foreclose on secured property that later proves to be contaminated with materials subject to control under CERCLA. The idea is good, because the current law includes all persons in the chain of title whether or not the person contributed to the problem.

The major difficulty with the legislation is there is no protection for a subsequent purchaser, if it is not a financial institution. Therefore, as a practical matter, there will be no market. No one will buy into such a problem.

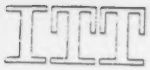
The only way it would work would be to exempt all subsequent purchasers. However, the clean up would continue to be needed at some future day. The alternative would be to obligate the prior/current owners to pay. This may prove to be illusive, depending on the finances of prior owners.

The bill will prevent loses beyond the initial investment. This is a help. If the legislation is directed at protecting financial institutions from further losses - that is good. Without guarantees against further liability and loses, the loss is fixed at the investment.

Further, liability problems arise from third party claims unless there is complete pre-emption of all claims. The legislation needs to address many issues so that there can hopefully be one comprehensive plan.

Sincerely,

Lynn M. Ewing, Jr.



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August 2, 1989

Honorable John LaFalce
Chairman
House Committee on Small Business
U.S. House of Representatives
2361 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

You recently introduced H.R. 2085 which seeks to amend the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (the "Act"). H.R. 2085 has now been referred to the House Energy and Commerce Committee.

The general thrust of this bill is to limit liability under the Act of commercial lending institutions acquiring facilities through foreclosures or similar means. As chief executive of a diversified commercial lending institution, many of whose units accept real property as collateral, I endorse that general thrust. However, I am concerned that H.R. 2085's definition of a "commercial lending institution" is too narrowly drawn. Accordingly, I recommend that, to address the problem in its fullest sense, the definition on page 3 of H.R. 2085 be slightly expanded by the addition of the following underscored language:

> "(3) DEFINITION OF COMMERCIAL LENDING INSTITUTION -- Section 101 of such Act is amended by adding the following at the end thereof:
>
> > '(39) The term 'commercial lending institution' means a person that is a commercial or savings bank, industrial savings bank, savings and loan association, or trust company, or is engaged in the business of making loans for commercial, corporate, business, or agricultural purposes.'"

I think you will agree with me that this change is more in the nature of a clarification than a substantive amendment since it seeks to ensure that all commercial lending institutions, and not just those specifically enumerated, would enjoy the protections you seek to provide in H.R. 2085. The need for the suggested modification is highlighted by the fact that, without it, the protections intended to be afforded by the amendment would

not be available to many major lender participants in the SBA program, including the 4th largest volume lender, ITT Small Business Finance Corporation, of which I am Chairman.

I certainly welcome your assistance in this matter and offer mine in support of H.R. 2085.

Very truly yours,

E E Null

Earl E. Null, President

EEN/kl/8995Z
Enclosure

cc: Mr. Stephen R. Leskovsky
Mr. Anthony J. Feraro